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THE
Original, Growth, Propagation and Condition

OF
FEUDS and TENURES

BY

KNIGHT-SERVICE,

In ENGLAND.

CHAP. I.

The Occasion of this Discourse, and what a Feud is.

IN the great Case of Tenures, upon the Commission of Defective Titles, argued by all the Judges of Ireland, and published after their resolution by the commandment of the Lord Deputy, this year 1639. it fell out upon the fourth point of the Case to be assumed, That Tenures had their original in England before the Norman Conquest: And in pursuit of this assumption, it was concluded, That Feuds were then and there in use. In proof hereof divers Laws and Charters of the Saxon Kings, and some other Authorities be there alledged, which being conceived to have cleared that point, it thus followeth in the Report, p. 35.

And therefore it was said that Sir Henry Spelman was mistaken, who in his Glossary (verbo Feodum) refers the original of Feuds in England to the Norman Conquest. And for a Corollary (p. 38.) addeth these words:

Neither is the bare conjecture of Sir Henry Spelman sufficient to take away the force of these Laws. Vide Spelman in Glossar. verbo Feodum.

Being thus by way of voucher made a chief Antagonist to the Reverend Opinion of these learned, grave, and honour'd Judges, I humbly desire of them, that writing what I did so long ago, and in a transitory passage among a thousand other obscure words (not thinking them to be provok'd to this account) they will be pleas'd to pardon my mistakings where they fall, and to hear without offence, what motives led me to my conjectures which they speak of. It is necessary therefore, that first of all we make the Question certain, which (in my understanding) is not done in the Report. For it is not declared whether there were divers kinds of Feuds or no; nor what kind they were that were in use among the Saxons: nor what kind those were that I conjectured to be brought in by the Norman Conquerour. I will therefore follow the direction of the Orator, and fix the Question upon the definition.

B

A Feud

The general definition of a Feud.

A Feud is said to be *Usus fructus quidam rei immobilis sub conditione fidei*. But this definition is of too large extent for such kind of Feuds as our Question must consist upon: for it includes two members or species greatly differing one from the other, the one temporary and revocable, (as those at

Wardship, Marriage, Relief, &c.) the other perpetual and hereditary. (As for temporary Feuds, which (like wild fig-trees) could yield none of the feudal fruits of Wardship, Marriage, Relief, &c. unto their Lords, they belong nothing unto our argument, nor shall I make any use in setting of them forth, than to assure the Reader they are not those that our Laws take notice of.

To come therefore to our proper Subject, let us enquire what that Perpetual Feud is, whereupon our Question must be fixed: For none but this can bear the feudal fruits we speak of, Wardship, Marriage, &c.

The particular definition of a Feud.

A Feud is a right which the Vassal hath in Land, or some immoveable thing of his Lord's, to use the same and take the profits thereof hereditarily: rendering unto his Lord such feudal duties and services as belong to military tenure: the mere propriety of the soil always remaining unto the Lord. I call it as the Feudists do, *Jus utendi pradio alieno*; a right to use another man's Land, not a property in it; for in the feudal speech the Tenant or Vassal hath nothing in the propriety of the soil it self, but it remaineth intirely unto the Lord, and is comprehended under the usual name which we now give it of the Seignory. So that the Seignory and the Feud being joined together, seem to make that absolute and compleat estate of Inheritance, which the Feudists in time of old called *Allodium*. But this kind of Feud (we speak of) and no other, is that only whereof our Law taketh notice, though time hath sometimes varied it from the first institution, by drawing the propriety of the soil from the Lord unto the Tenant. And I both conceive and affirm under correction, That this our kind of Feuds being perpetual and hereditary, and subject to Wardship, Marriage, and Relief, with other feudal services, were not in use among our Saxons; nor our Law of Tenures (wherein they depend) once known unto them. As shall appear by that which hereafter followeth.

CHAP. II. The Original, Growth, and Propagation of Feuds: first in general, then in England.

Before I enter into the Question in hand, it will be necessary for better understanding that which followeth, to set forth the Original, Growth, Propagation, and Condition of Feuds in general: Which I conceive to be thus.

There were no doubt from the beginning of *Jus Gentium*, Lords and Servants; and those Servants of two sorts. Some to attend and guard the person of their Lord upon all occasions in War and Peace. Some to manure his Lands for the sustenance of him and his Family. When private Families were drawn into a Kingdom, the Kings themselves held this distribution. Examples hereof are in all Nations. King David well observ'd it in the Institution of the Kingdom of Israel: Where, if such services have any shew of Feuds or Tenures, we have a pattern for them all: viz. For that of *Franc-almoine* in the Levites: For *Knight-service*, *Tenure in Capite*, and *Grand Sergeanty* in the Military men, which serv'd the King personally by monthly

Instances of Feuds among the Jews.

^a Cujac. in præfat. ad lib. 1. feud. p. 10. & seq. chap. 23, & 27. ^d Ibid. Cap. 23. ^e Cap. 27

^b Cujac. ad lib. 3. feud. tit. 1. p. 178. ^c 1 Chron.

courses: for *Socage*, in those whom *David* appointed to manure the Fields, dress the Vineyards, the Olive-trees, the Mulberry-trees, and that had the care of the Oyl, of the Oxen, of the Camels, Asses, Sheep, &c. For the Lands and portion of the Levites was given to do the service of the Tabernacle; ^d the Lands of the other Tribes, to fight the battels of the Lord against his idolatrous enemies, and to root them out. Thus may fancy couple the remotest things. To come lower down and nearer home, ^e *Pausanias* tells us, that when *Brennus* (who they say was a *Britain*) invaded *Greece* with an Army of *Gauls*; every horseman of the better sort, had two other horsemen to attend and second him (as his Vassals) and they three together were called *Τριμαρχειαν* *Trimarcesiam*, i. e. a society of three horsemen. ^f But *Cæsar* saith, that the nobler *Gauls* in his time, had (according to their abilities) many horsemen attending them in war, whom by a German word he calleth *Ambactos*, which properly signifies Servants, Vassals, Workmen, and Labourers; yet he by a fairer name expoundeth it there ^g in Latin *Clientes*, and in another place ^h calleth them among the Germans, *Comites* & *familiares*, as accounting them (like *Abraham's* ⁱ 318. Souldiers) to be all their Lord's Followers and of his Family. *Tacitus* ^k likewise nameth them *Comites*, as Companions and Followers; *quod bello sequi Dominum coguntur*, saith ^l *Cujacius*. But *Tacitus* further saith, *Gradus quinetiam ipse comitatus habet judicio ejus quem sectantur*; that there were degrees in those companies, as he whom they followed did appoint. Like them, perhaps, in after-ages of *Earls*, *Barons*, *Knights*, &c. But how the *Comites* or *Ambacti* were maintained, neither *Cæsar* nor yet *Tacitus* have related. As for such portions of Land, as we call *Knights-Fees*, they could not then have any; for *Cæsar* ^m speaking of the Germans saith, (and so it appears by *Tacitus*) ⁿ *neque quisque agri modum certum, aut fines proprios habet, &c.* "That no man hath any certain estate or peculiar bounds of Lands; but the Magistrate and Lords (of the place) assign from year to year to kindreds and such as live together, what quantity of Land, and in what place they think good; and the next year force them to remove. The reason you may see in *Cæsar*, who ^o also sheweth, that they had no common Magistrate; but the Lord of the Town or Territory set what Laws he would among his followers or *Ambactos*.

These Laws, the *Goths*, the *Swedes*, the *Danes*, and *Saxons*, called *Bilagines*; of *By*, which in all these Languages signifieth a Town, and *Lagh* or *Laghe* which signifies Laws, as *Gravius* ^p *Succus*, and our Saxon Authors testifie. And tho' *Jornandes* a Spanish *Goth* writeth it after the Spanish corruption *Bellagines*, yet we in *England* keep the very *radix* and word it self *By-laws* even unto this day, tho' diverted somewhat from the sense that *Cæsar* speaks of. For we call them *Town-laws* or *By-laws* which the Townsmen make among themselves; but *Cæsar* sheweth that the Lords imposed them. Here-with agreeth, that of *Tacitus*, or some other Ancient, who speaking of the Germans saith, *Agricolis suis jus dicunt*, They give Laws to them which dwell upon their Lands. For I take *Agricolis* here in the larger sense, to extend to all that dwell upon the Lord's Lands (as well his military followers as his husbandmen) in the same manner as *Solicole* containeth all that live upon the Soil, *Ruricole* all that live in the Country, and *Cælicole* all that live in Heaven.

These Lordships of Towns, which *Cæsar* speaketh of, were after by the Normans called *Maneria*. The *Ambacti* or *Comites*, and these which he saith *sectabantur Dominos suos*, were called *Vassalli*, and *Señatores Manerii sive Curie Domini*, Vassals and Suiters of Court. The *Bilagines* or *Town-laws* were called *Consuetudines* and Customs of the Mannor. The jurisdiction, which the Lord had

^d Num. 21. 14. 1 Kings 13. 17. ^e Lib. de Phocid. p. 118. ^f Bell. Gall. lib. 6. p. 118. ^g Bell. Gall. p. 184. ^h Ibid. p. 124. ⁱ Genes. 14. 14. ^k Germ. Mor. p. 129. ^l Cujac. ad Constit. Lotharii feud. lib. 5. p. 284. ^m Bell. Gall. lib. 6. p. 120. ⁿ Germ. Mor. ^o Bell. Gall. p. 121. ^p In Epist. ad Bon. Vulcan. Vid. *Bellagines* in Glossario nostro.

over his Followers and Suiters, was called the *Court Baron*, and the portions of Land, &c. assigned to his Followers for their stipend or maintenance, were at first called *Munera*, after *Beneficia*; and lastly *Feuda* or *Tenants-lands*: which were of two sorts, one for military men called *Feudum militare* and *Feudum nobile*; tenure by *Knights-service*; the other for husbandmen: call'd therefore *Feudum rusticum* & *ignobile*, tenure in *Socage*, or by the Plough.

Thus it appeareth that *Feuds* and *Tenures* and the Feudal-law it self, took their original from the *Germans* and Northern Nations. In such condition therefore (how obscure soever), as *Caesar* and *Tacitus* left them to us, [¶] *Gerardus Niger* the Consul of *Milan* (who flourished about *A. D.* 1176. and first composed them into a book) taketh them up as he there findeth them; and speaking of the times of *Caesar* and *Tacitus* (as having the forementioned passages under his eye) saith *Antiquissima tempore se erat in Dominorum potestate connexum, ut quando vellet, possent auferre rem in feudum à se datam*. And this agreeth with *Caesar*, by whom it seemeth in the places before mentioned, that the *Ambacti* or Followers of the *Germans* had in those times either no Land at all, or no Estate at all in their Land, or first but at the will of the Lord, and then but for one single year. Which *Gerardus* also confesseth to have been the condition of the eldest sort of *Feudataries*; for he saith presently after his former words, *Postea vero eo ventum est, ut per annum tantum stabilitatem haberent (res in feudum data)*. Thus for another while their Feudal Vassals (whom here he calleth *Fideles*, and we now Tenants by *Knights-service*) enjoyed their Feuds no otherwise than from year to year at the pleasure of their Lords, either by grant or sufferance, till further grace confirmed them to them for divers years, and at length for term of life, which *Gerardus* also presently there declareth, saying, *Deinde statutum est ut usque ad vitam fidelis producerentur (Feuda)*. In this manner stood the principal Feuds themselves, even those of Earldoms and Dukedoms (which they call *Feuda majora* and *Feuda regalia*) in the latter time of the Saxons, till the coming of the Conquerour. But as touching the lesser Feuds which we call *Knights-Fees*, I find nothing in *Abby-books*, otherwise than a numerous multitude of Leases and Grants made by Bishops and Abbats to their Followers for term of life, without mention of Tenure or Feudal-service. Yet I must confess that there is a notable precedent left us by *Oswald* Bishop of *Worcester* in the time of King *Edgar*, who in granting out the Lands of his Bishoprick unto his Followers, for life or three lives, imposed upon them by a solemn Instrument, ratified by the King himself, a multitude of Services and Charges, as well military as civil: which after you shall here see, and then consider how and whether they conduce to our *Feuds* or not.

Tenures
for Life.

If we understand them to be *Feuds* among the Saxons, or of that nature, then are we sure they were no more than for life, and not inheritable, nor stretching further, without further grace obtained from the Lord. For which purpose *Conradus Salicus* (a French Emperour, but of German descent) going to *Rome* about forty five years before the time of our King *Edgar* (*viz. sub An. Dom. 915.*) to fetch his Crown from Pope *John X.* made a Constitution upon the petition of his Souldiers: That *filii* or *aviatici*, the sons, or if no Sons were living the Nephews or Grandsons (as they call them) of some of them, should succeed in the *Feud* of their Father. (See the Constitution in the beginning of the fifth book of *Feuds*.) But *Gerardus* noteth that this Law settled not the *Feud* upon the eldest Son, or any other Son of the *Feudatary* particularly; but left it in the Lord's election to please himself with which of them he would. After this, *Feuds* were continued in divers places by several increments to the third, fourth, fifth, sixth and seventh generation, and sometime (for want of lineal issue) collaterally to the Brother, as *Ge-*

[¶] *Cujac. in pref. ad lib. p. 1.* [¶] *Cujac. ad lib. 1. feud. p. 21.* [¶] *Vid. infra Cap. 26.*

radus testifieth; but whether by some positive Law, or by the munificence of the Lords, he doth not tell us; nor when or by whom they were made perpetual and hereditary; tho' he confesseth, that at last they grew to be extended *in infinitum*, and then they began to be settled upon the eldest Son, who formerly had no preeminence above a younger Brother. But while they stood sometimes produced in this manner by the indulgence of Princes, to the third, fourth, or fifth generation, &c. some men of learning have concluded them to be hereditary, as tho' there were no medium between a limitation (how far soever extended) and *infinitum*.

To pass by that; let us now go on in examination, when and how *Feuds* became hereditary. Some suggest a shew of such a matter under the two *Othones*, German Emperours (who succeeded one the other about the year 973.) But to rest upon the common and received opinion (which we shall hereafter more at large declare,) the truth is, that when *Hugh Capet* usurped the Kingdom of *France* against the *Carolingies* he, to fortifie himself and to draw all the Nobility of *France* to support his Faction about the year 987. granted to them in the year 988. that whereas till then they enjoyed their *Feuds* and Honours but for life or at pleasure of their Princes; they should from thenceforth for ever hold them to them, and their heirs, in Feudal manner by the Ceremony of Homage, and Oath of Fealty: And that he would accordingly maintain them therein, as they supported him and his heirs in the Crown of *France*; which they joyfully accepted.

How
Feuds be-
came he-
reditary.

This was a fair direction for *William of Normandy* (whom we call the Conquerour) how to secure himself of this his new acquired Kingdom of *England*; and he pretermitted not to take the advantage of it. For with as great diligence as providence, he presently transfer'd his Country-customs into *England* (as the *Black Book* of the Chequer witnesseth) and amongst them (as after shall be made perspicuous) this new French custom of making *Feuds* hereditary, not regarding the former use of our Saxon Ancestors; who, like all other Nations, save the French, continued till that time their *Feuds* and *Tenures*, either arbitrary or in some definite limitation, according to the ancient manner of the *Germans*, receiv'd generally throughout *Europe*. For by the multitude of their Colonies and transigrations into all the chiefest parts thereof, they carried with them such Feodal Rites, as were then in use amongst them; and planting those Rites and Customs in those several Countries where they settled themselves, did by that means make all those several Countries to hold a general conformity in their *Feuds* and Military customs. So by the *Longobards* they were carried into *Italy*, by the *Saliques* into the Eastern parts of *France*, by the *Franks* into the West part thereof; by the *Saxons* into this our *Britain*, by their neighbours the *Western Goths* (who communicated with the *Germans* in Manners, Laws, and Customs,) into *Spain*; and by the Eastern *Goths* into *Greece* it self, and the Eastern parts of *Europe*, &c. These (I say) carried with them into the parts of *Europe*, where they settled, such ancient Feodal Customs, as at the time of their transmigration were in use among them. But the more prevalent and more generally receiv'd Customs, were those that were in use or taken up in the time of *Conradus* the Emperour, and when *Feuds* became hereditary; for on them especially is the Feudal Law grounded and composed, tho' enlarg'd oftentimes by Constitutions of the Emperours, and spread abroad into divers Nations by their example, countenance, or authority. Wherein the Court of *Milan* was chiefly followed *in rebus judicatis* (as appeareth by *Duranus*ⁱ and *Merula*ⁱⁱ;) but reserving unto every Nation their peculiar Rites and Customs. ^b For it was generally received into every Kingdom, and then conceived to be the most absolute Law for supporting the

Feuds he-
reditary
in Eng-
land.

ⁱ Comment. in consuet. Feod. Cap. 1. & Rex Mediolan. lib. 3. ^b Gunn. p. 409.

Royal estate, preserving union, confirming peace, and suppressing robberies, incendiaries, and rebellions. I conclude with *Cujacius*, who upon the above-cited passages of *Gerardus Niger*, saith, ¹ *Quam aliam Feudorum originem querimus? His veluti incrementis paulatim feuda constituta sunt; quæ & post Conradum usus recepit; ut transirent ad liberos mares in infinitum, &c.*

The great growth of Feuds as to Title.

The Military and Lay-Feuds being thus advanced from an arbitrary condition to become perpetual and hereditary, ² did now in ordinary account leave their former name of *Beneficia* (which were only temporary for years, or life) unto the Livings of the Clergy; and retained to themselves the proper name of *Feuds*, whereby they were produced to be perpetual and hereditary. *Cujacius* therefore speaking of them both, saith, ³ *Feudum differt à beneficio, quodd hoc temporaneum fuit, illud perpetuum.* And treating in another place of these *beneficiarii* and *temporarii possessores*, he saith further, ⁴ *Isdem postea cepit concedi Feudum in perpetuum, quod est verum, & proprium Feudum.* Concluding in a third place, ⁵ that *Propria Feudi natura hæc est, ut sit perpetua.* So that *Cassineus* in the Feuds of Burgundy saith, ⁶ that *omne Feudum quocunque modo acquisitum sit hereditarium, cum successione sit redactum ad instar Allodialium*: That all Feuds by what means soever they be acquired, are made hereditary; in so much as by the continual succession of the Children into the Feuds of their Fathers, the Feuds are now brought to be like *Allodial* or patrimonial inheritances. Thus *Feudum* (which at first was but a tottering possession, *ad voluntatem Domini*) growing at length to be an irrevocable Estate, descending by many successions from Son to Son, became at last to be an absolute inheritance, and thereupon the words themselves *Feudum* and *Hereditas* in common use of speech

(*Quem penes arbitrium est & jus & norma loquendi*)

to be *voces convertibiles*, and by a fair *metonymia* each to signify other. For as *Horace* further saith,

—*Verborum vetus interit ætas,*

Et juvenum ritu florent modo nata vigentque.

Aptly therefore and truly is it said by the ever honoured Justice *Littleton*, that *Feudum idem est quod hereditas*; and the captious criticism of Sir *Thomas Smith* (Dr. of the Civil Law) in denying it, is to his own reproach: For his great Master *Cujacius* (as before appeareth) supporteth *Littleton*; and his fellow Civilians do tell him, *quod in feudis particularis & localis consuetudo attendenda est.* And *Littleton* received it as used in this signification from the eldest writers of our Law. Of the like indiscretion is that of Dr. *Cowell* who carpeth at this ancient phrase used in the *formulis* of our pleading, where it is ordinarily said, *Rex seifitus fuit in dominico suo ut de Feodo*, as tho' *de Feodo* was there to be understood according to the Court of *Milan*, for *prædium militare superiori Domino & servitiis obnoxium* not by the Laws of *England*, *pro directo Dominio vel hereditate pura & absoluta.*

No proper Feuds before the Conquest.

To conclude therefore, It appeareth by this passage of Justice *Littleton's*, joined to that we have formerly delivered, that our Law took no notice of Feuds till they were become hereditary with us; which being since the Conquest (as we have already shewed, and shall prove abundantly hereafter) overthroweth all the arguments in the Report produced for proving our Feodal Rites of *Tenure*, *Wardship*, *Marriage*, *Relief*, &c. to have been in use among the Saxons; for till they were hereditary, these appendances could not belong to them. It is also very improbable that Feuds were made hereditary here in *England* before other Countries; or that the more civil Nations of *Europe*, should take example herein from our rude (if not illiterate) Saxons.

¹ *Ad lib. 1. Feud. Tir. 1. p. 21.* ² *Cujac. Feud. lib. 3. p. 180.* ³ *Ibid.* ⁴ *Lib. 1. p. 7.*
⁵ *Feud. lib. 1. p. 5.* ⁶ *Rub. 3. §. 5. col. 437.*

CHAP. III.

That none of our Feodal Words, nor Words of Tenure, are found in any Law or ancient Charters.

It is plain by what hath been said, that our modern kind of Feuds could not be in use among our English Saxons. And it will now be a Question, whether any of our modern Tenures (or which of them) were then in use, or not? The Report saith, "It is most manifest that Capite-Tenures, Tenures by Knight service, Tenure in Socage, Frank-Almoign, &c. were frequent in the time of the Saxons." I desire that without offence, I may examine this that is so manifest and so frequent. I confess there be many specious shews of Knight service and Socage among our Saxon Antecessors; but whether by way of Tenure, Contract, or De more Gentium, must be well examined. For the Roman and other Nations had formerly as great command over their followers, and such as dwelt upon their Lands, as our Saxons had; yet was it without any rule or speech of Tenure.

The word *Tenure* is neither known nor found in any Latin Author of antiquity, nor any conjugate thereof (as *tenentes*, *tenementa*, *tenere*, or *tenendum*) in a feodal sense. The first place where I meet with *tenere* in that manner, is amongst the *Salique* and *German*, in the Constitution before mentioned of *Charlemagne* the Emperor, about the year 915, when *Beneficia* (which we now call Feuds) were first continued to some of the sons and grand children of the male line of them that then enjoyed them. But I find not one of those words (or any conjugate or equivalent to them, in all our Saxon Laws. The word *Feodum*, *Feud* or *Fer* it self, is never mentioned in them, nor is there any found of Tenure in Capite, Tenure by Knight service, Tenure in Socage, Frank-Almoign, &c. either in our Saxon Laws or in the Laws of any other Nation (that I can find) till the time that Feuds began to be perpetual or hereditary (as before is mentioned.) It is true that in some Latin Charters of the Saxon time, we now and then find the words *tenere*, *tenementum* and *tenendum*; and in a Charter of *Beorredus* King of the *Mercians* dated anno 848. the words *de eodem feodo*, (as tho' Lordships at that time had been distributed into Feuds;) which being reported by *Ingulfus* a Saxon, giveth great probability that Feuds were then in use. But it is to be noted, that these Charters are (as I said) in Latin and not in Saxon; and therefore not likely to be the very originals, but translations of them made after the Conquest for the instruction of the Normans, either by *Ingulf* himself, or some other expert in the Norman Language, Laws, and Customs. Who applying himself to the understanding of the Normans, used Norman words, and such interpretation as they were best acquainted with, tho' differing from the propriety of the Saxon Tongue; and so perhaps translated *de eodem feodo* for *de eodem territorio* or *patrimonio*; and *tenentes*, *tenementa* and *tenendum*, for *possidentes*, *possessiones*, and *possidendum*. Not unlike our translators of the holy Scriptures, who tell us of the Arms of Families, Chancellors, Sheriffs, Recorders, Townclerks, Doctors of Law, Homage done to *Solomon*, and of the assignment of our blessed Saviour; as tho' the Jewish and *African* Nations had in those days of old, their College of Heralds, the same Magistrates, Officers, Degrees in School, Customs of Law, Pleas of the Otowir and form of Government, which we in England have at this day.

By such allusions I suppose (or illusions rather) came out later Feodal words into ancient Latin Charters. I desire to see but one Charter in the Saxon

What Tenures were in use among the Saxons.

Tenures when first used.

Translation of Saxon Charters.

No Feodal words among the Saxons.

tongue before the Conquest, wherein any *feodal Word* is apparently expressed. A Saxon Chronicle telleth us, that King *Alfred* in the year 896. gave *London* to *Ethelred* (an Earl or Alderman that married his daughter *Ethelfled*) to *healpen*, that is *ad tenendum*, which some understand feodally as to hold it of him; but *Wigorniensis* reports the matter plainly *ad servandum*, that is, to keep and defend it. So among the Customs of *Kent*, the word *healpen* (i. e. holder) is used for a Tenant in the Saxon, which there cited. But it is to be noted, that those Customs were collected long after the Conquest, and therefore written in the Norman Tongue, not in the Saxon; and that the distich it self is not of the ancient Saxon, but of a puiſie dialect used vulgarly since the Conquest.

The charter of *Beorredus* examined.

But because the Charter of *Beorredus* (produced by my self against my self) is more material for proof of Feuds among the Saxons, than all that is alleged to that purpose in the Report; First, in respect of the Antiquity thereof; then for that it nameth the word *Feodo*, expressly; and thirdly, for that it declareth certain Lands to be *de eodem Feodo*, as if there were many other Feods then in use: Give me leave (I beseech you) to examine this Charter yet more largely and particularly. It is therefore to be understood, that the elder Saxons made their ordinary conveyance of Lands, &c. without Deed or Writing, by delivery of a *Turff* or *Spear*, a *Staff*, an *Arrow*, or some other symbol, in token thereof. Yea their very Laws (like those of the *Lacedaemonians* called *Rhetra*) were unwritten; till *Ethelbert* their first Christian King, caused his own Laws to be put in writing about the year 605. (as other Western Nations in an age or two before had done) and as *Bede* saith, wrote them in the Saxon Tongue. The first Charter (if I shall so call it) or Writing, touching Lands and Privileges, was (as a MS. of *Canterbury* reporteth) made by *Withredus* King of *Kent* in the year 694. and (as that Charter it self witnesseth) was appointed to be kept in the Church of our Saviour at *Canterbury*, as a precedent for posterity to imitate; and tho' it appeareth not there in what Language it was written, yet I presume it was in the same with their Law, which was the Saxon Tongue. For there be two copies of it extant in Latin, so differing the one from the other, as thereby they both appear to be translations. For proof thereof, the one of them useth the words *Charta* and *Chartula*, which *Ingulfus* affirmeth to be brought in hither by the *Normans*, that is, above three hundred years after the time of this Charter of *Withred's*. The other *Latin* copy termeth it *Scriptum* not *Chartam*; and the Saxons themselves used neither of those words, but called such writings in *Latin* *Chirographos*, not *Chartas*; as *Ingulfus* there also testifieth. So that it hereby appeareth, that the Prototype or first pattern of Charters which the Saxons imitated, was not in Latin but in Saxon.

Saxon Charters in the Saxon Tongue.

Secondly, it is therefore to be presumed (and very strongly) that tho' this Charter of *Beorredus* remaineth to us by a Latin copy, yet the original it self (like a thousand others) was in the Saxon Tongue. Nor could it in all probability be otherwise; for at the very time when it was made, (viz. in anno 868.) learning was so generally subverted throughout *England*, by the barbarous *Danes*, that King *Alfred* (who began to reign within four years after the date thereof) saith, *Paucissimi fuerunt eis Humbrum, qui vel preces suas communes sermone Anglico intelligere potuerant, vel scriptum aliquod Latino transferre. Tam sane pauci fuerunt, ut ne unum quidem recordari possum ex australi parte Thamesis, tum cum ego regnare occiperam.* But as their original Charters were in the Saxon Tongue, so in the Leiger-books in which they are preserved to us, they are often set down in the Saxon, and then (because the Books themselves are in Latin) they are there translated also into Latin, and oftentimes set down in the Latin only without the Saxon; as in the

• Hist. Lib. 2. c. 5.

• Concil. Brit. p. 378.

Book of Ramsey Abby, which having no Charters in it in the Saxon Tongue, the Author of it saith, * that himself had there translated them all into Latin, after that *that* Abby in the days of King Stephen had recovered her Liberty. Yet I deny not, that Latin Charters might be often used by their latter Clergy-men, when Learning (which in *Beorred*'s time was utterly subverted) began at last to recover Life again.

Thirdly, (I conceive) that the Word *Feodum* or *Feodum* was not in use in *Beorredus*'s days, (viz. anno. 868.) For Proof whereof, we are to consider the Infancy, Youth, and full Age of the *feodal Law*; for according to these several times, the *feodal Lands* had their several Denominations. First, they were called *Manera*, then *Beneficia*, and lastly *Feuda* (as is afore said.) *Marculfus* who collected the *Formulas* (or *Precedents* as we call them) of Charters and Instruments of the time he lived in (which was under *Clodovius II.* King of *France* about the year 660.) maketh mention, in his first Book of *Manera*, and in his second of *Beneficia*, but no where of *Feuda*: And he who a hundred years or more after him collected the *Formula's incerti Autoris*, speaketh divers times of *Beneficium*, but never nameth *Feodum*: For that this Term came not into use till afterwards, when these *Beneficia* began to be granted in perpetuity. *Beneficium Regis* (saith *Bignonius*) *postea Feodum dictum est*. And in another Place he saith, *Beneficis Nomine ea pradia dicta sunt* — *quæ Feuda posteritas dixit; Initio namque vita accipientis finiebantur*. As if he should say, they were called *Beneficia* when they were granted only for Life of the Grantee; but were called *Feuda* when they began to be granted in perpetuity, and not before. *Cujacius* therefore speaking of *Feudatarii*, which Word came into use with *Feodum*, (for Relatives *mutuo se ponunt & auferunt*) saith, that when *Altores, custodesque Prædiorum nostrorum temporarii, perpetui esse ceperunt, &c.* when those who had the use and ordering of our Lands for a certain time, began to enjoy them in perpetuity, and yet retained their Latin Name of *Homines* (our *Mens*;) they grew then also to be called after new and foreign Names, *Vassalli, Leudes* and *Feudatarii*, by the Princes and great Noblemen; who chused rather to grant them Lands in Perpetuity, in consideration that they should do them military Service. And he saith, that these Names were first brought into *Italy* by the German Princes. Where (and particularly in *Milan*, as *Merula* reporteth) the *feodal Laws* and Customs have had their Original, and from thence been propagated throughout *Europe*. By this it appeareth, that the Words *Feodum* and *Feudatarii* were not in use till that the Word *Manera* was grown obsolete. Nor afterward, till *Beneficia*, leaving to be temporary or but for Life, became to be perpetual Possessions; which (as I have often said) was not long before the Conquest. So that the Word *Feodum* could not be in use in *Beorredus*'s time, who lived two hundred years before.

Fourthly, Tho' the Word *Feodum* were in the original Charter of *Beorredus*, yet doth it not prove that our *Feuds* were then in use. For call them *Beneficia* or call them *Feuda*, certain it is that neither the one nor the other were then hereditary or perpetual, but either temporary or for Life only; which at length begat the Difference between *Feuda* and *Beneficia*; for *Beneficia* in a restrained sense began to signifie no more than an Estate for Life, (in which sense it resteth at this day in our Clergy-men's Livings called *Benefices*) and the Word *Feuda* grew to be understood only of such *Beneficia* or *Benefices*, as were perpetual and hereditary.

To return from whence we digressed. I suppose it now appeareth sufficiently, how some *feodal Words* are crept into Charters and Writings of Saxon Date; and I think I may conclude, that the Words before mentioned (*Tenura, Tenentes, Tenementa, tenere* or *tenendum*, in a *feodal* sense, or *Feodum* it self)

* In præfatione illius Libri. b Chap. 10. c 21. c Ad Marculf. p. 470. d P. 550. e Proem. ad lib. Feud. p. 7.

were not in use among them. Much less Tenure *in Capite*, Tenure by Knight-service, Tenure in Socage, or Frank-Almoign; tho' the like Services were performed to the Saxon Lordships, by their Thanes and Theodens, their Socmen or Husbandmen, and their Beadsmen or Clergy-men, by way of Contract for the Lands received from them; as were after the Conquest to the Norman Lordships by way of Tenure, for Lands holden of them.

The Neapolitan and Sicilian Constitutions (which had their Original from Princes of Norman Lineage) do . . . the Conquest here in England make mention of *tenens, tenere, tenementum* and *tenere de Rege in Capite*; but whether the Normans carried these Terms into Italy, when they conquer'd Naples about the year 1031. or brought them from thence into Normandy, I cannot determine. Certain it is, that from the Normans they came to us in England; for being not met with before in any authentick Author, we presently after the Conquest begin to hear of them, even about the third or fourth year of the Conqueror's Reign, as appeareth by his Charter of *Emendationes Legum* in the Red Book of the Exchequer, f. 162. b. and in *Lambard's Archaionomia*.

CHAP. IV.

Of Tenures in Capite, more particularly.

No Tenure in Capite among the Saxons.

Toucing Tenures therefore *in Capite*, I think I may boldly say, that here were none in England in the Saxons time, after the manner now in use among us.

First, For that their *feodal Lands* (as we have shewed) were not descendable before the Conquest. For tho' there were *hlaford* and *thane* amongst the Saxons, that is, Lord and Thane, or Servitour, whom beyond the Seas they called *Seigneur & Vassall, alias Vassallum, Dominum & Clientem*, while their Feuds were arbitrable or but for Years or Life; yet grew not the Words of Tenure into use, till that Feuds became descendable to posterities, and thereby obliged the whole succession of heirs to depend and hold upon their Capital Lords by the Services imposed at the Creation of that Feud.

Secondly, The Word *in Capite* is like a Relative in Logick; which being a supreme Degree of it self, implieth some other Degrees to be under it, as *Tenant in medio* or *Tenant in imo*, or both, viz. *Tenant in Capite*, *Tenant in Menalty*, and *Tenant Paravale*, or at least, *Tenant in Capite* and *Tenant Paravale*, which inferiour Tenants could not be in the Saxons time, for that the granting of Feuds in perpetuity (out of which the under-Tenancies must be deduced) was (as I have said) not yet in use.

Tenure in Capite of two sorts.

Thirdly, To hold *in Capite* is of two sorts, the one general, which is of the King, as *Caput Regni & Caput generalissimum omnium Feodorum*, the Fountain whence all Feuds and Tenures have their main original; the other special or subaltern, which is of a particular Subject, as *Caput Feodi* or *Terra illius*, so called because he was the first that created and granted that Feud or Land in that manner of Tenure, wherein it standeth, and is therefore at this day so to be understood by the ordinary Words (in our Deeds) of *tenendum de Capitalibus Dominis Feodi illius, &c.* signifying that the Lands so granted (since the Statute of *Quia Emptores Terrarum*) must now be holden mediately or immediately of him or his heirs or assigns, that was *Caput Feodi*, the first that created or granted that Feud in that Tenure who thereupon was called *Capitalis*.

^a Lib. 1. Tit. 65. &c.

^e Lib. 3. Tit. 21. &c.

^f Norm. Reform. p. 4.

^g In Gul. Reg.

pitalis

pitalis Dominus & Caput Terra illius; among the Feudists *Capitanus Feudi illius*. And the Grantee and his heirs were said to be Tenants *in Capite*, because they held immediately of him that first granted that Feud or Land in that manner. Hereupon David I. King of Scots and Earl of Huntingdon here in England, was in right of his Earldom (in the time of King Henry I.) said to be *Capud Terre de Crancfeld & Craule post Regem Anglie*. And Roger de Molbray about the same time or shortly after, made a Grant in these Words: *Roger de Molbray omnibus hominibus & fidelibus suis Normannis & Anglis salutem. Sciatis quod ego concessi Roberto de Ardenna Clerico amico meo totum nemus de Bedericheslea cum omnibus antiquis libertatibus & consuetudinibus ejusdem nemoris, ad tenendum de me in Capite & heredibus meis ita libere & quiete, &c. sicut ego unquam, &c.* The Deed is without date; but note that the direction of it is *Omnibus hominibus fidelibus suis Normannis & Anglis*, which implieth that it was made before Henry II's time: For he being of Anjou in France. and bringing in French-men with him, altered then very properly the directions of Charters into *Hominibus & fidelibus suis Francis & Anglis*. Yet I find the same direction, tho' more improperly, to be some time used under the Norman Kings. Qu.

So likewise (as before) W. Marshall the great Earl of Pembroke, in a Charter of his, useth these words about the beginning of Henry III's time (as I take it:) *Nisi forte forinseca Tenementa tenueris de me (in) Capite*. And ^bMat. Paris in An. 1250. making mention of one G. a Knight, saith, that Rex memoratus (Hen. III.) *cuidam Militi tenenti de Ecclesia S. Albani in Capite, &c. Warennam concessit*: Where the Words *tenenti de Ecclesia S. Albani in Capite*, do signifie, that some Abbot of the Church of St. Alban first created and granted that Feud.

Having thus in general manner prepared my way to the ensuing Discourse, I shall now (God willing) by the patience of them whom it most concerneth, examine such particular assertions, as are produced in the Report, either to prove our *Tenures* and *Feuds* with their dependancies, to have been in use among the Saxons, or to disprove what I have affirmed in my Glossary, or in the Chapters here precedent, and will first shew therein as followeth.

CHAP. V.

What Degrees and Distinction of Persons were among the Saxons, and of what condition their Lands were.

FOR the better understanding of our Discourse, it is necessary that we should shew what Degrees and Distinctions of Persons were among the Saxons, and of what Condition their Lands were. Touching their Persons, they are by themselves divided in this manner, Eople and Leopl, Deegn and Deoden. In Latin Comes and Villanus, Tainus [unus] & alius, *singuli pro modo suo*. That is to say, the Earl and the Husbandman, the Thane of the greater sort called the King's Thane, and the Thane of the lesser sort called the Theoden or Under-Thane. More Degrees the Saxons had not in their Laity, and among these must all the Tenures lye that were in use with them. As for their Bond-men (whom they called Theowes and Esnes) they were not counted members of that Common-wealth, but parcels of their Master's Goods and Substance.

Distinction of persons among the Saxons.

^a Lib. Ramsey f. 42. d. 5. 279.

^b Pag. 157.

Lands among the Saxons.
Bocland.

Touching Lands among the Saxons they were of two sorts, Bocland and Folcland. *Bocland* signifieth *Terram codicillarem* or *liberariam*, Charter-lands: for the Saxons called a Deed or Charter an *bec*, i. e. *librum*, a book; and this properly was their *Terra hereditaria*: For it commonly carried with it the absolute inheritance and propriety of the Land, and was therefore preserved in writing, and possess'd by the *Thanes* and Nobler sort, as *prædium nobile, liberum & immune a servitiis vulgaribus & servilibus*. In which respect the *Thanes* themselves were also called *Liberales*, as appeareth by *Canute's Forest-Laws* (*Art. 1, 3. & seqq.*) a name not well agreeing with feudal Servitudes. But it seemeth by divers Abby-books, that some Estates for life, which we call *Frank-tenements*, were also put in writing, especially among the latter Saxons. Yet were not these accounted bocland; for they were laden commonly with many feudal and ministerial Services, whereas *Bocland* (as I said) was free from all Services, not holden of any Lord, the very same that *Allodium*; descendable (according to the common course of Nations and of Nature) unto all the Sons, and therefore called *Gavelkind*, not restrain'd to the eldest Son (as feudal Lands were not at first) but devisable also by Will, and thereupon called *Terra testamentales*, as the *Thane* that possessed them was said to be *Testamento dignus*.

Folcland.

Folcland was *Terra vulgi*, the Land of the vulgar people, who had no Estate therein, but held the same (under such Rents and Services as were accustomed or agreed of) at the will only of their Lord the *Thane*; and it was therefore not put in writing, but accounted *prædium rusticum & ignobile*.

Inland.

But both the greater and the lesser *Thanes*, which possessed *Bocland* or hereditary Lands, divided them according to the proportion of their Estates into two sorts; i. e. into *Inland* and *Outland*. ^bThe *Inland* was that which lay next or most convenient for the Lord's Mansion-house, as within the view thereof, and therefore they kept that part in their own hands for supportation of their Family and Hospitality. The *Normans* afterwards called these Lands *Terras dominicales*, the Demains or Lord's Lands: The *Germans* *Terras indominicatas*, Lands in the Lord's own use: The *Feudists*, *Terras curtiles* or *intra curtem*, Lands appropriate to the Court or House of the Lord.

Outland.

Outland was that which lay beyond or out from among the *Inlands* or Demains, and was not granted out to any Tenant hereditarily, but, like our Copy-holds of ancient time (having their original from thence) meerly at the pleasure of the Lord. *Cujacius* speaking of this kind of Land, calleth it *proprium Feudum*, that is to say, such Land as was properly assigned for feudal Lands. *Proprium Feudum est* (saith he) *extra Curtem, & consistit in Prædiis*. As if he should say, That Land properly is a Feud or feudal Land, which lyeth without the Demains of the Mannour, and consisteth in Land not in Houses. We now call this *Outland* the *Tenant's Land*, or the *Tenancy*, and so it is translated out of *Birtrick's Will* in the Saxon Tongue.

This *Outland* they subdivided into two Parts; whereof one part they disposed among such as attended on their persons either in War or Peace, (called *Theodens* or lesser *Thanes*) after the manner of Knight's Fees; but much differing from them of our time, as by that which followeth shall appear. The other part they allotted to their Husbandmen, whom they termed *Ceorls* (that is *Carles* or *Churles*.) And of them we shall speak farther by and by, when we consider all the Degrees aforesaid; beginning with the Earl.

^a Vid. Gloss. in Verb. Foresta. ^b Ing. Sax. p. 864. ^c Pref. ad Libr. Feud. p. 12. ^d Hinc. Capit. p. 495.

CHAP. VI.

Of Earls among our Saxons.

AN *Earl*, in the signification of *Comes*, was not originally a Degree of Dignity, as it is with us at this day; but of Office and Judicature in some City or portion of the Country, circumscribed anciently with the Bounds of the Bishoprick of that Diocess; for that the Bishop and the Earl then sat together in one Court, and heard jointly the Causes of Church and Common-wealth, as they yet do in Parliament. But in process of time the Earl grew to have the Government commonly of the chief City and Castle of his Territory, and withal a third part of the King's Profits arising by the Courts of Justice (Fines, Forfeitures, Escheats, &c.) annexed to the Office of his Earldom. Yet all this not otherwise than at the Pleasure of the King; which commonly was upon good Behaviour, and but during Life at most. This is apparent by the severe Injunction of King *Alfred* the Great (labouring to plant Literature and Knowledge amongst the ignorant *Earls* and *Sheriffs* of his Kingdom) imposed upon them, That they should forthwith in all Diligence apply themselves to the study of Wisdom and Knowledge, or else forgo their Office. Herewith (saith *Affer Menevensis* who lived at that time and was great with the King) the *Earls* and *Sheriffs* were so affrighted that they rather chose *insuetam disciplinam quam laboriose discere, quam potestatum ministeria dimittere*; that is, To go at last to the School of Knowledge, how painful soever, rather than to lose their Offices of Authority, and Degrees of Honour; which *Alfred* there also declareth, that they had not by Inheritance, but by God's Gift and his: *Dei* (saith he) *dono & meo, sapientium ministeria & gradus usurpatis*. This is manifest by divers other Authorities and Examples in my Glossary (*in verbo Comes*) as the Reader, if he pleases, may there see.

Earl no Title of Dignity anciently.

Some conjecture, that *Deira* and *Bernicia* in *Northumberland* and *Mercia* in the midst of *England*, were feudal and hereditary *Earldoms* in the *Saxon* times. Those of *Northumberland* presently after their first arrival under *Hengist*, about the year 447. that of *Mercia* by the Gift of *Alfred* the Great (about the year 900.) to *Ethelredus*, a man of Power, in way of Marriage with his daughter *Ethelseda*: but for ought I see it is neither proved by the succession of those *Earldoms*, nor our Authors of Antiquity. For my own part, I think it not strange, that there was not at the entry of the Saxons a *Feudal* and *Hereditary Earldom* in all Christendom. As for this our *Britain*, the misery of it then was such, as it rather seemed an *Anarchy* and *Chaos*, than in any form of Government. Little better even in *Alfred's* days, through the Fury of the *Danes*; tho' he at last subdued them for his Time. Howsoever three or four Examples in five hundred years before the Conquest differing from the common use, is no inference to overthrow it, especially in times unsettled and tumultuous. The noble Earldom of *Arun-del* in our days of Peace, differeth in Constitution from all the other *Earldoms* of *England*; yet that impeacheth not their common manner of succession.

No Earldoms hereditary.

Loyseau and *Pasquier*, learned Frenchmen, speaking of the Dukes and Earls of *France*, which *England* ordinarily followeth (and sometimes too near the heels) justify at large what I have said; shewing the Dukes and

Earldoms in France.

* *Affer. de Gest. Alfridi*, p. 21. b *Ibid.* c *Loyseau de Seignier*, c. 5 p. 106. lin. ult.

Earls in the *Roman Empire* (from whose example others every where were derived) were like the *Proconsuls* and *Présidents* of Provinces, simple Officers, who for their entertainment had nothing else but certain Rights and Customs raised from the People (which we in *England* called *Tertium denarium*.) And that the Dukes and Earls of *France* were Officers in like manner, but had the Seignèrie of their Territory annexed to their Office: so that they were Officers and Vassals both at once, (that is to say) *Officers* by way of Judicature, and *Vassals* (whom we call *Feodal Tenants*) for their Seignories of Dukedoms and Earldoms. But (say they) *tenue neant moiensen fief a vie*, &c. holden notwithstanding as a Fief for Life, not hereditary nor patrimonial in the beginning, as afterward they were. This Change they assign to have been begun about the end of the first Line of their Kings; who being at that time weak and simple men, the Dukes and Earls took opportunity to make their Estates hereditary. But it continued not long; for the first Kings of the second Line reduced them presently to conformity. Yet some there were in the remote Provinces, that maintain'd themselves hereditary in despite of the Kings, whereupon ensued many Wars. Thus far both these Authors do concur, and then *Loyseau* addeth further, That at the end of the second Line, *Hugh Capet* having made himself King of *France*, permitted all to hold their Dukedoms, Earldoms, and Seignories hereditarily; and taking Homage of them as of hereditary Fiefs, each party obliged themselves to support the other and their posterity in those Dignities as hereditarily. This happened in *France* a little before the Conquest of *England*, and from this precedent of *Hugh Capet's*, did our *William* the Conquerour make the Earldoms and Feuds in *England* first hereditary, as we have already shewed in the second Chapter. So that I conclude (as I assumed in the beginning) that the *Saxon Earldoms* were not hereditary, nor otherwise *Feodal* (if we shall so term them) than for Life, whereon neither *Wardship* nor *Marriage*, &c. could depend. Yet I confess that the Dukes and Earls of the *Saxon* times both had and might have great Possessions in other Lands as patrimonial and hereditary, namely their *Thaneland*: and in what condition they possessed them, it shall appear anon, when we come to speak more at large of *Thanes* and *Thanelands*.

CHAP. VII.

Of Ceorls; and that they were ordinarily but as Tenants at will, or having Lands held not by Knight-service.

Ceorls.

THE Division before mentioned, which the *Saxons* made of their own Degrees, leadeth me in this next place (tho' not orderly) to speak of the *Ceorle* (that is of the *Carle* or *Churle*) and Husbandman. The Ancients called him in Latin *Villanus*, not as we ordinarily take it for a *Bondman*, but for him that dwelling in a Village or Country Town, lived by the Country course of Husbandry. Mr. *Lambard* therefore (to decline the misconceiving of the word *Villanus*, doth render it in the *Saxon Laws* by *Paganus*, which signifieth the same that *Villanus* doth, according to the French for a *Villager*, but not according to our English for a *Bondman*. Our *Saxons* otherwhile did term them, like the Dutchmen, *Boors*, that is, such as live by tilth or grasing, and by works of husbandry. Such were the *Ceorls* among the *Saxons*; but of two sorts, one that hired the Lord's *Outland* or *Tenementary Land* (called also the *Folcland*) like our *Farmers*: the other that tilled and manured his *Inland* or *Demeans*, (yielding *Operam* not *Censum*, Work and not Rent) and were thereupon called his

his *Socmen* or *Ploughmen*. These, no doubt, were oftentimes his very *Bondmen*; I therefore shall not meddle with them, but will hold me to the first sort, who having ordinarily no Lands of their own, lived upon the *Outlands* before mentioned of their Lord the *Thane*, as customary Tenants at his Will, (after the usual manner of that time) rendering unto him a certain portion of Victuals, and things necessary for Hospitality. This Rent or Retribution they called *Feorme*, but the word in the *Saxon* signifieth Meat or Victuals; and tho' we have ever since *Henry II's* time, chang'd this reservation of Victuals into Money, yet in letting our Lands, we still retain the name of *Fearms* and *Fearmers* unto this day. The quantity of the *Feorme* or Rent for every Plough-land, seemeth in those times to have been certain in every Country, according to the Nature of the Place. King *Ina* in his Laws did make it so through all the Territory of the *West-Saxons*, as you may see (with much more touching this matter) in my Glossary, *verbo Firma*.

But inasmuch as the chiefest part of the Fruits and Profits of the Lands thus manured by the *Ceorls* or *Husbandmen*, redounded to the benefit of their Lords, and not of the *Ceorls* themselves; the *Romans* counted them to be as *Bondmen* and not *Freemen*. *Cesar* therefore speaking of them while they were yet in *Germany*,^b saith, *Plebs pene servorum habebatur loco*: That their common people were in a manner Bondmen. And *Tacitus* to the same purpose, *Ceteris servis* (meaning these *Ceorls* or *Husbandmen*) *non in nostrum morem descriptis per familiarum ministeriis utuntur; suam quisque sedem, suos penates regit. Frumenti modum Dominus aut pecoris aut vestis, ut colono, injungit. Et servus hactenus paret*. But this Service was no Bondage. For the *Ceorl* or *Husbandman* might as well leave this Land at his Will, as the Lord might put him from it at his Will: and therefore it was provided by the Laws of *Ina*^d in what manner he should leave the Land when he departed from it to another Place. And the Writ of *Waste* in *Fitz-Herbert*^e seemeth to shew that they might depart if they were not then well used.

It is apparent also that the *Ceorl* was of free Condition, for that his Person was valued as a Member of the Common-wealth in the Laws of *Æthelstan*^f; and his least valuation is there reckoned to be 200^g; whereas the Bondman was not valued at all, for that he was not (as I said) any part of the Common-wealth, but of his Master's Substance: nor was he capable of any publick Office. But the *Ceorl* (tho' he had no Land) might rise to be the Leader of his Country-men, and to use the Armour of a Thane or Knight^h; viz. an Helmet, an Habergeon, and a gilt Sword. And if his Wealth so increased as that he became owner of five Hides of Land, the valuation of his Person (which they call'd his *Were* or *Weregild*) was increased to two thousand *thrimfas*, that is six thousand shillings, and being then also adorned with other marks of Dignity, he was counted for a *Thane*; as you shall see in the next Chapter.

But (for all this) a *Ceorl* or *Husbandman* (tho' he were a Freeman) was not by the Feodal Law of that and later times, capable of a Knight's-fee, or Land holden by Military Service; and therefore what Land soever he purchased, was to be intended Land of no such Tenure. And it appeareth further by the Laws of *Æthelstan*, that the five Hides of Land (before mentioned) purchased by the *Ceorl*, were descendable to his Posterity; which sheweth also that they were not *Feodal Land*, for that Feuds at that time were not here descendable, as we have often declared. So that I hope I may conclude, that the *Ceorls* or *Husbandmen* among the *Saxons* held no Land by our Tenure of Knight-service.

Ceorls.

Earls capable of Knight's-Fees.

^a Cap. 70. ^b P. 116. ^c De Mor. Germ. p. 132. ^d Cap. 65. ^e Fol. 55. C. ^f Cap. de Weregild. ^g Ll. Æthelst. ibid.

CHAP. VIII

Of Thanes, and their several kinds.

SEing then the weight of the Question will rest wholly upon the *Thanes*, we must consider them the more diligently, first in the Quality of their Persons, secondly in the Tenure of their Lands.

Thane,
what.

A *Thane* was (in like manner as the *Earl*) not properly a Title of Dignity, but of Service: so called in the *Saxon* of *Denian servire*, and in Latin *Minister à ministrando*. But as there be many Degrees of Service, some of greater Estimation and some of less, so those that served the King in places of Eminency, either in Court or Common-wealth, were called *Thani majores* and *Thani Regis*; and those that served under them in like manner as under Dukes, Earls, and other great Officers of the Kingdom, and also under Bishops, Abbats, and the greater Prelates of the Church, were called *Thani minores*, or the *lesser Thanes*. And as the Titles of honourable Office and Service in Dukes, Earls, &c. became at length to be made hereditary; so this of *Thanes*, like our Titles of Noblemen and Gentlemen, descended at last with their Fathers Land upon their Children and Posterity. And continued thus till after the Conquest, as appears by some Writs and Charters of the Conquerour.

The Qua-
lity of
Thanes.

Buchanan describing the Quality of their Persons, calleth them, *Præfectos Regionum sive Nomarcas* & *Questores rerum capitalium*, Governours of Places, principal Ministers of Justice, Chequer-men, Sheriffs, &c. But we will take them as the *Saxons* themselves describe them in the place before mentioned, where it thus followeth, *gif Leofl ge ðeah þ he herbe fullice gif hyða agener lante*, &c. if a *Churl* or *Husbandman* thrive, so that he had fully five Hides of his own Land, a Church and a Kitchin, a Bell-house, and a Gate-house, a Seat and a several Office in the King's Hall, then he was from thenceforth worthy of the Rights of a *Thane*: meaning (as I understand it) he was then one of the *greater Thanes* or *King's Thanes*. For the *lesser Thane* is by and by described also in that which followeth, *viz.* And *gif ðegen geðeah*, &c. And if a *Thane* himself so prospered that he served the King, and rid upon his Message as others of his Court, and then had a *Thane* (*i. e.* an *under* or *lesser Thane*) that followed him, which had five Hides (or Plough-land) chargeable to the King's Expedition, and served his Lord in the King's Court, and had gone thrice upon his Errand to the King: he (this *under Thane*) might take an Oath instead of his Lord, and at any great need supply the place of his Lord. And if a *Thane* did so thrive as he became an *Earl*, he had the Rights of an *Earl*. And a Merchant might become a *Thane*, &c.

Mr. *Lambard* conceiveth this place to discover but three Degrees among the *Saxons*, *viz.* *Earls*, *Thanes* and *Ceorls*, not admitting the *under-Thane* to be a several Degree. The words seem otherwise, and the *Saxon* division before recited maketh four Degrees, *Earl*, *Ceorl*, *Thegn* and *Theoden* or *under Thane*. Some therefore distinguish *Thanes* into *majores* and *minores*, some into *majores*, *minores* (otherwise called *mediocres*) and *minimi*, whom *Canutus* in his Forest-Laws calleth *Minuti* and *Tinemmen*. I dare not venture to define them particularly, but will rest upon the *Saxon* division first mentioned, which I find to be pursued by *Norman* terms in the Laws of *Ed. Confess.* and *William Conq.* delivered by *Ingulfus*, *viz.* *Count*,

* *Hist. Scot. Lib. 6.* b *lin. Cant. p. 502.*

Baron, Valvasor and *Villain*. Where he placeth *Count* instead of *Earl*, *Baron* instead of *Kings-Thane*, *Valvasor* instead of *Theoden* or *lesser Thane*, and lastly *Villain* instead of *Churl*. As though the Division both of the *Saxon* and *Norman* times did hold analogy one with the other, and both of them with ours at this Day, viz. of *Earls* and *Barons* of the Kingdom, including the greater Nobility; *Barons* of Towns and Mannours, including the lesser Nobility or Gentry; and that of our *Teomen*, including the *Husbandmen*.

To return to the *Thanes*. This *Saxon* passage hath *per transfennam* shew'd unto us, not only the Quality of their Person, but the Nature of their Land, whereupon all our Question doth depend. And true it is, it sheweth that both they and it were subject to Military Service, call'd in Latin *Expeditio*, in *Saxon* *utpene* and *penogun*, and in foreign Nations *Heribannum*, that is the calling forth of an Army. And it appeareth by an ancient MS. of *Saxon* Laws in the King's Library, that the *Thanes* were not only tyed to this, but to many other Services to be done unto the King, and that in respect of their Land, which notwithstanding bred no *Tenure in Capite* or by *Knight-service*. The words be these, *Thani Lex est, ut sit dignus reſtitutione Testamenti ſui, & ut tria faciat pro Terra ſua, Expeditionem, Burghbotam & Brugbotam, & de multis Terris majus Landirectum. Exurgit ad Bannum Regis, ſicut eſt Deorhege, ad manſionem regiam, & Sceorpum in hoſticum, & cuſtodiam maris, & capitis, & pacis, & Elmeſfeoh, & Ciricſetum, i. e. pecunia Eleemoſyna, & Ciricſcetum, & alia res.* Thus in English. The Law touching a *Thane* is; That he have a Power to make a Will, and that in respect of his Land he shall do three Things, viz. *Military Expedition, Repairing of Castles, and mending of Bridges*, and for more Lands to do more *Land-Duties*. To go forth upon the King's Summons to the enclosing of his Park and Mansion-house, and to *..... into the Enemies Lands, and to defend the Sea, his own Head, and the Peace, to pay *Almsmonies, Church-seeds, Church-shots*, and other things.

* Sce-
opp.
Veſtitus,
Appara-
tus. Somn.

What is there in all this to shew either a *Tenure in Capite* or by *Knight-service*? It will be said that the *Military Expedition*, and *Warding of the Sea* against Enemies, imply a *Tenure by Knight-service*, and that those and the other Services being to be performed to the King, and upon the King's Summons, shew a *Tenure in Capite*. And no doubt, so would it be for Lands given in this manner by the King since the Conquest. But I conceive that none of all this riseth out of any *Tenure*, or *feodal reservation* made by the *Saxon* Kings in granting these Lands, or by any particular Contract agreed of by the *Thane* or *Subject* in accepting them, but out of a fundamental Law or Custom of the Kingdom, (as ancient as the Kingdom it self) whereby all the Land of the whole Kingdom was obliged to this *Trinoda neceſſitati*, of military Expedition, and building or repairing of Castles and Bridges. So that if this made a *Tenure by Knight-service in Capite* in the *Thane Lands*, then must it follow also, that all the Land of the Kingdom was likewise holden by *Knight-service in Capite*: For it was wholly tyed to those three Services, as appeareth in the Council of *Eanham*^d, (Cap. 22, 23.) where they are commanded to be yearly done. And by the Laws of *Canutus* (Cap. 10. 62.) where they are appointed to be done as Necessity requireth. And also by the Law of King *Ethelred*, who, about the thirtieth year of his Reign, ordain'd, that every eight Hides or Plough-land through the whole Kingdom, shall find a Man with a Croslet and Helmet to the *Naval Expedition*. And every three hundred and ten Plough-lands, an ordinary Ship. For these purposes, was the whole Land formerly divided, either by *Alfred* the great or some other precedent King, into 243600 Hides or Plough-lands; and according to this Division were the military and other Charges of the Kingdom impos'd

The
three
Services
upon
Lands.

Trire-
mem.

^c Cap. de dignitate hominum f. 163. ^d Conc. Brit. sub an. 1009. p. 520. ^e al. 9.

and proportion'd, without ever any mention of *Tenures in Capite* or by *Knight-service*. Hence it rose that the Saxon Kings in granting of Lands, Liberties, and Privileges, unto Ecclesiastical Persons and others, were usually so careful in reserving *Expedition*, *Burghbote* and *Brigbote*, as you may see in the Charters of King *Withred*¹, *Ina*², *Aethelbald*³, *Aethelwulf*⁴, *Edgar*⁵, &c. in the *Britain* Councils, as also in the Charters here following, and in a Multitude of others elsewhere besides. Neither did this military Expedition otherwise at that time bind the Saxons to a *Tenure in Capite* or *Knight-service*, than it doth us at this Day in the *Naval Expedition* lately now reviv'd.

Thane-lands not subject to Feudal-service.

For better manifestation that *Thanelands* were subject to no feudal Service, consider, I pray you, the Words of the Saxon passage before mention'd, where it is said that a *Thane* must have three Hides at least of his *ageney lanbe*, i. e. of his own Land, not *Terre emphyteuticaria*, or *precaria*, not *usu-fructuaria*, or *feodataria*, but as a *Latin* Copy hath it *Terre sue proprie*; where the Word *proprie* carrieth another Sense than is ordinarily conceiv'd, as to signifie in this place, Land wherein no other Man hath any interest by feudal Superiority or Dominion, but whereof himself hath *meram proprietatem*, the sole and absolute propriety; even the same *Alodium* that is spoken of in the *Report*¹, and which no Man hath or can have now at this Day, but the King's Land holden of no Man in the feudal Sense, (for the phrase of *Tenure* was not then in use amongst the Saxons, nor ty'd any Man to do any feudal-Service.) Another old *Latin* MS. therefore reciteth the same Saxon passage in these Words, *Si Villanus* (so they at that time call'd a Husbandman) *ita crevisset sua probitate, quod pleniter haberet quinque Hidas de suo proprio Alodio*, &c. *dignuserat honore liberalitatis*, quod Angli dicunt *Danescraper* puppe: *si autem liberalis homo*, i. *Dezen* [*Thanus*] *ita profecisset in Regi servisset*, & *vice sua equitaret in Missatico Regis*, *hic talis si haberet alium* [*Thantum*] *sub se, qui ad Expeditionem Regis quinque Hidas teneret* & *in Aula Regis Domino suo servisset*, &c. Here I must say with *Cujacius*^m, speaking of the Author of the second Book of *Feuds*: *Proprietatem* [alias] *velut quod hic Alodium*: Noting thereby that *Proprietas* and *Alodium* are *synonyma*, signifying Land free from all feudal Service and holden of no body. Yet in that sense *Alodium* is here said to be *Terra ad Expeditionem Regis*, Land oblig'd to the Warfare of the King.

I must note also by the way, that he that thus translated the Saxon passage by the words, *qui ad Expeditionem Regis quinque Hidas teneret*, follow'd the manner which before we spake of, in rendering Saxon Customs by Norman phrases. The Reader perhaps will here understand *teneret* in the feudal Sense, for to hold of his Lord, whereas in the Saxon Book the words are no otherwise than *gij he hepte*, i. e. if he had five Hides of Land, so that *teneret* here is no otherwise to be taken than for *possideret*.

To return to our purpose. *Thaneland* might no doubt be tyed to do *Military Service* or *Knight-service*, and yet not holden *in Capite* or by *Knight-service*; for it is one thing to hold by *Knight-service*, and another to be tyed to do it. No man holdeth, that hath not *Tenementum* or *Tenementale quiddam*: But a Man might be tyed to do this military Expedition for his personal Estate (tho' he had no Land) or for his very Person itself, as appeareth by the Laws of King *Ina*, Cap. 52. where it is said *gij se procunoman*, &c. If the *Sithcundman* having Land forbearth to go the Expedition, he shall forfeit his Land and 120^s. and if he have no Land yet he shall forfeit 60^s. and an *Husbandman* (who if he had Land was but Tenant in *Socage* according to our Law) 30^s. It appeareth also by many Charters of the Saxon Kings that *Thanelands* were not feudal, and that the military Expedition made no *Tenure by Knight-service*. Give me leave therefore to produce some of them, that you may see thereby the use of those times, and what the Kings themselves conceiv'd therein.

¹ *Con. Brit.* p. ² P. 227. ³ P. 256. ⁴ P. 349. ⁵ P. 433. ^m *Lib. 2. Tit. 27. p. 166.*

CHAP. IX.

Charters of Thane-lands granted by Saxon Kings, not only without mention of Tenure or feudal Service, but with all Immunity, except Expedition, &c.

EGO Eadwig Monarchiam totius Britanniae Insulae cum superno iuramine obveniens, cuidam meo fidei Ministro, vocato nomine Ellwine, duas Manfas & dimidiam virgum perenniter illic ubi antiquorum hominum relatu nominatur ut Behylfinghacane, habere quamdiu vivat, & post cui voluerit impertiat, cum his rebus quae sibi rite pertinent tam in magnis quam in minimis. Sit haec Donatio immunitis a Servitute mundana, excepto illo labore, qui communis omni populo videtur esse; not naming Expeditione, &c. but concluding Si quis augeat, augeatur. Si quis minuat, careat premio aeterno, &c. So that here he was freed a Servitute mundana both great and small, that was incident or inherent to the Land by way of Tenure, and yet he was chargeable to military Expedition, and to the repairing of Bridges, Castles, Burroughs, and Fortifications, but that not otherwise than as all the Land of the Kingdom was charged, (as before we have shew'd)

Eadwigus.

Regnante in perpetuum Domino nostro, &c. Ego Edgarus Rex Anglorum, ceterarumque Gentium in circumspectum gubernator & Rector, cuidam fidei meo Ministro vocato nomine Alde, modicam munimentis mei partem Terrae, i. e. in Dorset, & tres Partes in illo loco, ubi Anglica appellatione dicitur at Lonk, ut habeat ac possideat quamdiu vivat, & post se unum Heredem, quatenus sibi placuerit, derelinquat. Sit hoc praedictum Rus liberum ab omni malorum obstaculo cum omnibus ad Rus rite pertinentibus, Campis, Pascuis, Pratis, Sylvis, excepto communis labore, Expeditione, Pontis & Arcis Constructione. Si quis vero hominum hanc meam Donationem cum stultitia temeritate jactando infringere tentaverit, sit ipse gravibus per colla depressus catenis inter flammis domas terrorum Daemonum catervas, nisi prius ad satisfactionem emendare voluerit. Iste terminus haec Tellus ambita videtur: Dicitur in landgomanik ad Lonk, &c. Haec Charta scripta est Anno Domini a Incarnationis, 958.

Edgarus.

Mundi denique status Christi moderatoris disponente, &c. Ego Ethelredus totius Albionis Basileus, cuidam mihi obsequentium Ethelwoldo vocatione, pro ejus placabili obsequio quandam Terrae particulam, i. e. decem Manentia in loco quem Coloni Maningforde appellant in perpetuam concedo Hereditatem, quatenus ille bene perfruatur ac prospere possideat quamdiu presenti fructur vita, & post vitae suae terminum cuiusque sibi placuerit Heredi derelinquat. Sit autem praefata Terra liberrima ab omni munduali obstaculo, cum omnibus ad eam pertinentibus in Campis & Pascuis Pratisque ac Curvis Aquarum, tribus tantummodo causis exceptis, i. e. Expeditione, Pontis Arcive Restoratione. Si quis autem hanc Donationem pervertere studuerit, perpetuae maledictionis incurrat reatum & Gehennae aeternum sustineat incendium, nisi mortis ante exitum hanc praesumptionem emendare curaverit. Iste terminus ambitur praefata Tellus Bnt of ear tpeapiban, &c.

Ethelredus.

So King Ethelred in the Charter to his Thane Seabryne, granteth five Castles in Reudin, cum omnibus, &c. cuiusque sibi libuerit Cleronomo derelinquat Hereditate, &c. Sit autem istud praefatum Rus liberrimum ab omni munduali obstaculo in magnis ac modicis, Campis, Pascuis, Pratis; tribus tan-

immodo rationabiliter rebus exceptis quæ^b usuali ritu observantur, i. e. cum glomerata sibi expeditioni compulerit populari commilitonum configere castra, atque cum sua petivit Pontis titubantia muniri vada, ac cum concinni turma Urbium indigent muniri stabiliter septa, &c. Dat. Anno Domini Incarnat. 1014. Indict. 12.

Cnute.

In nomine Dei almi & agie Sophie, &c. Idcirco ego Cnute Rex, Anglorum Gubernator & Rector, quandam Ruris portionem, quædam & septem, viz. Terræ Mansas, illo in loco ubi jamdudum Solicola illius Regionis nomen imposuerunt ad Abbodesbury, meo fidei Ministro, quem nonnulli Affines &c. appellare solent, in perpetuam confirmo Hereditatem quatenus ille bene perfruat^a ac perpetualiter possideat, quamdiu Deus per suam ineffabilem misericordiam vitam illi & vitalem spiritum concedere voluerit, deinde namque sibi succedenti cuicunque voluerit Cleronomo jure hereditario derelinquat, ceu supra diximus in eternam Hereditatem. Moneat igitur hoc nostrum donum immobile eterna libertate jocundum cum universis quæ ad eundem locum pertinere dinoscuntur tam in magnis quam in modicis rebus, in Campis, Pascuis, Pratis, Rivulis, Sylvis, Aquarumque Curfibus; excepto communi labore quod omnibus liquide patet, viz. Expeditione, Pontis Constructione, Arcisve Munitione. Si quis autem, &c.

Edward Confess.

And King Edward the Confessor granting duas Mansas & dimidiam in Wudeton, &c. to Thola (Widow of the foresaid Ore, whom in a Saxon Charter he calleth his Man, that is his Thane) saith thus: In eternam Hereditatem concedo quatenus illa habeat & perpetualiter possideat hanc meam regalem Donationem quamdiu vivat, & post obitum suum cuicunque voluerit Heredi relinquat. Sit autem præfatum Rus liberum ab omni seculari gravamine tam in magnis quam in modicis rebus, in Campis, Pascuis, Pratis, Sylvis, Aquarumque Decursibus; tribus exceptis quæ omnibus hominibus communia sunt, viz. Expeditione, Pontis, Arcisve Restauratione.

After all these, I will yet add one other of King Eadgar's, having somewhat of note above the rest, as anon we shall observe. It was made to the new Monastery of Hide near Winchester in these Words.

Edgar.

Annunte Altitoni Moderatoris imperio, &c. Ego Edgar totius Britannia Basileus quasdam Villas ut nominantur, Dunketone habens quinque Hidas Terræ & Ecclesiam, Sueyle cum 28 Hidis Terræ, &c. concedo in puram & perpetuam eleemosynam novæ Wintonienſi Ecclesia beato Petro Apostolorum Principi dicatæ, &c. cum omnibus Utensilibus, Pratis, viz. Pascuis, Rivulis, eterna largita sint Hereditate, &c. Sint autem prædicta Villa, Rus, Mansiones, Terræ, Rivuli, omni terrena servitutis jugo libera imperpetuum, tribus exceptis, rata viz. Expeditione, Pontis Arcisve Restauratione. Si quis autem hanc nostram Donationem in aliud quam constitimus transferre voluerit, privatus consortio Sanctæ Dei Ecclesiæ, æternis Baratri incendiis, &c. puniatur, &c.

Whatsoever the phrase be in the Saxon original, (for I take this to be a translation of the Norman time) it here maketh the Lands to be given in *Frank-almoign*, but without mention of *tenendum*, and yet sheweth that they were tied to *Expedition*, &c. yea and calleth it notwithstanding *puram Eleemosynam*; whereas tho' in *libera Eleemosyna* a Rent in old Deeds hath sometime been reserv'd, yet can it not be called *pura*, if any Rent or Service at all were reserved to the Donor.

I have recited these Charters the more at large for that they apparently discover by many Reasons (which we shall set forth in the next Chapter) that the *Thanes* possess'd not their *Thane-lands* either by any *Feodal-service* or by way of *Tenure*.

^a Sic Ed. Conf. in chart. fact. Orto. Minist. 7. ^c MS. de Abbotsb. Chart. 2. ^d Lib. MS. ejusd. Monast. sub Tit. Edgar Chart. ult.

CHAP. X.

Observations upon the precedent Charters, shewing that the Thane-lands or Expedition were not feodal or did lye in Tenure.

THESE Charters present unto us the general manner of granting and possessing of Thane-land among the Saxons during the time of their Monarchy, till the very coming of the Normans. And there is to be observed in them (as in other before mentioned) what hereafter followeth.

First, That the word Thane which is here and usually interpreted Minister, (that is an Officer or Servant, of Danish *servire*) noteth nothing belonging properly to the War, and is not therefore to be understood as Bracton fancieth the word Barones to be *quasi Robur Belli*, or to import any matter either of feodal Service or of Tenure.

Thane has no direct relation to War.

Secondly, That (as we have formerly observed upon other Charters) so there is not in any of these now produced, one word either of Tenure or of feodal Signification, which presently after the Conquest became innumerable, as brought in by the Conquerour. Yet well may it be, that Edward the Confessor (having his Education in Normandy) might (as Travellers use to do) bring some Norman words and manners into England.

No mention of tenure, &c.

Thirdly, That instead of *tener* and *tenendum* (by which the Norman Feudists implied a Clientary if not servile Dependence, that the Tenant hath upon the Lord) the Saxons used *habeat, possideat, fruatur, or perfruatur* (and elsewhere *gaudeat*) words of Freedom and Immunity. So likewise for Tenementa (signifying things holden of a superior Proprietary) they used *Mansas, Manentia, and Mansiones à manendo*, (as places of abode) or *Casatas à casa*, for a Dwelling-house, otherwise call'd *Hida, quasi Tectum à Tegendo*, including under these Names all the Lands that belong'd thereunto. And those that dwelt upon those *Mansas*, &c. they called not Tenentes, Holders, as we do, but *Manentes*, as persons abiding there. All the foresaid words being of the middle-age-dialect, not appropriated to the feodal Language.

What us'd instead of tenure.

Fourthly, In granting of Feuds and Feud-Lands, the Consideration is always for matter *de futuro*, as *pro Homagio & Servitio habendo*. But here in granting these Thane-lands, the consideration is for service past or present, signified by the Quality of the Thane, as *fideli Ministro meo*, or *pro placabili obsequio*, not only without Reservation of any future Service, but with express immunity from all Services: As, to use the words of the Charters themselves, 1. *Ut sint libera vel immunia à servitute mundana*. 2. *Ab omni malorum obstaculo*. 3. *Liberrima ab omni munduali obstaculo*. 4. *Liberrimum ab omni munduali obstaculo in magnis & modicis*. 5. *Æterna libertate jocundum*. 6. *Liberum ab omni seculari gravedine*. Such was the Freedom of these Thane-lands, equal and no less than that of the Lands given in Frank-Almoigne by King Edgar in the last cited Charter, which are there said to be *Omni Terrena servitutis jugo libera imperpetuum*.

The Occasion of granting Thane-lands.

Fifthly, The feodal Lands might not be aliened without Licence: But the Thane by the very words of his original Charter, might grant them *cui-cunque voluerit*.

Thane-lands alienated.

Sixthly, A feodal Tenant or Tenant by Knight-service (as we call him) could not devise his Land by Will before the Statute of 32 Hen. VIII. tho' it were with Licence of the Lord and of the King himself, (which Law the Germans themselves

Thane-lands devised by Will.

themselves do hold even unto this day. And the *Danes* can yet devise no Land by Will (as I am informed) but the *Thane* might devise his *Thane-land* to whom he would, as appeareth by the Words of King *Edward* the Confessor in a Charter to *Thola*, where he saith, *Possideat hanc meam Regiam Donationem quamdiu vivat, & post obitum suum cuicunque voluerit Heredi relinquat*; excluding hereby all Title of Wardship and Feodal Duties. To the same effect are the rest of the Charters; and therewith agreeth the Privilege of a *Thane* before mentioned, *Thani Lex est ut sit dignus Rectitudine Testamenti sui*. As for that Passage in the Will of *Brictick* the *Saxon*, where he seeketh his Lord's Consent that his Will may stand, I conceive it to be in respect of some *Foleland* or customary Land, which according to the use of that time he held at the Will of his Lord, and not in respect of any *Thane-land*. For tho' this *Brictick* were a man of great Possessions, yet was he none of the chiefest sort of *Thanes* called the *King's Thanes*, but as appeareth by his Will, an *under-Thane* belonging to *Elfric*, who was Earl of *Mercia*. And how far the Privilege of these *under* or *lesser-Thanes* extended, I cannot yet determine.

Thane-lands granted to Women.

Seventhly, If *Thane-land* were of the Nature of Lands holden by Knight-service, then by the feodal Law of that time it could not *transire à lancea ad fufum*, that is, it might not be granted to Women; for Women were not then, nor long after, capable of feodal Land. But the Land here granted to *Thola* was *Thane-land*, as appeareth by the very Words of her Charter; for that it is granted in *eternam Hereditatem perpetualiter possidendam*, which words (making an Estate of Inheritance) were only proper to *Thane-land* otherwise called *Bocland*; not to *Foleland* or popular Land, which was but at Will of the Lord for Years or for Life.

No service upon Thane-lands but what was expressed.

Eighthly, There could no *Tenure* nor *Service* lye upon the *Thane-lands*, other than what was expressed in the Charters. For in the end of every of them there was an horrible Curse (which in those days was fearfully respected) laid by the King himself upon all those that should violate the Charter, (either by adding other incumbrances, or by diminishing the granted immunities.) So that it is not to be supposed that there was any lurking *Tenure*, or matter of *plus ultra* to impeach them. The curse beginneth in every of the Charters with these words, *Si quis autem &c.*

Expedition, Repairing of Castles, &c.

Ninthly and lastly, Touching Expedition, and Repairing of Castles and Bridges, which the *Saxons* called *Burghbote* and *Brughote*, tho' the two first of them be wholly military, and the last serving as well for the Passage of the King's Army as for the Trade and Commerce of his People; yet were none of them either Marks of *Tenure* or of feodal Service, as appeareth by that we have formerly shew'd, and by the Testimony of these Charters, where (to use the words of *Edw.* the Confessor in that to *Thola*) it is said that they are, *Om-nibus hominibus communia*, a common burthen to all Men, as belonging to the safety and sacred anchor both of the Kingdom and Common-wealth. The *Saxons* therefore did not call them *Services* or *feodal Duties*, as things that lay upon the person of the Owner; but *Landirecta*, Rights that charg'd the very Land whosoever did possess it, Church or Lay Man. And these Duties were ordinarily excepted in every Charter, not for that they should otherwise be extinguished, but *per superabundantem cautelam*, lest the general words precedent should be mistaken to involve them and to release that which the King could not release. For tho' *Ethelbald* by his Charter to the Monks of *Croyland* did give the site of that Monastery, with the Appendancies, &c. *libera & soluta ab omni onere seculari in perpetuam Eleemosynam*, yet in his Charter of Privileges granted to all Churches and Monasteries of his Kingdom, speaking of the repairing of Castles and Bridges, he confesseth and saith, that *Nulli unquam relaxari possunt*. And I suppose that the word *Expedition*

was here omitted by the negligence of the Scribe; for I never find it severed from repairing of Castles and Bridges in any other Charter. And also tho' King *Ethelwulf* by his memorable Charter of Privileges (ratify'd by the great Council of *Winchester* in the year 855.) did by exprefs words free *Sanctam Ecclesiam*, that is all the Churches and Monasteries of his Kingdom, *ab Expeditione & Pontis Extructione & Arcis Munitione*^b, yet the whole Clergy about the year 868. did notwithstanding voluntarily assist his Son *Beorredus* against the *Danes* with all the Power they could, as appeareth, by the Charter of the same *Beorredus*.

CHAP. XI.

More touching the Freedom of Thane-land out of Doomsday.

THO' that which is deliver'd in these Charters be authentical and need no farther Proof, yet to convince broad spreading Errors the more manifestly, it will not be unnecessary to shew what *Doomsday* it self relateth to confirm it. For whereas Lands holden in *Capite* and by *Knight-service*, could not otherwise be disposed than by Licence of the King or Superiour Lord, *Doomsday* sheweth that the *Thane-lands* might be used and disposed at the pleasure of the Owner, without impeachment of any other. For at *Ebsa* in *Suthry* under the Title of *Ric. fil. Comitis Gisleberti*, it saith, *Hanc Terram tenuerunt novem Teigni & cum ea poterant utere quo volebant*. Plain Latin, but the sense is, That nine *Thanes* held this Land of *Ebsam* (in the time of *Edward* the Confessor) and might do with it what they would. So at *Est-Burnham* in *Buckinghamshire* under the Title of *Milo Crispin*, *Duo Teigni homines Brictrici hanc Terram tenuerunt, & vendere potuerunt*; And here it seemeth that these *Thanes* were not the King's *Thanes*, but of the lesser sort; for that he calleth them *Homines Brictrici*. So in the same Shire under the Title of *S. Petr. Westmon.* it is said of the same Town of *Est-Burnham*, *Hoc Manerium tres Teigni tempore Regis Edwardi tenuerunt, & vendere potuerunt*.

Thane-lands disposed of at the pleasure of the Owner.

It there also appeareth that the *Thane-land* might be charg'd with a Rent issuing out of it, for it immediately followeth, *& tamen ipsi tres reddiderunt quinque oras de consuetudine*. And it might be restrain'd from Alienation, as where it is said in *Doomsday*, *De ea (viz. Lega Pelton) sunt in Dominio due Hida; una ex hiis fuit Tainland, non tamen poterat ab Ecclesia separari*. Where the word *tamen* implieth, that altho' *Thanelands* might otherwise be alienated, yet this particularly could not. So likewise might it be entailed upon a Family, as appeareth in the Laws of *Alured* Cap. 37. But thus *Doomsday* after the Conquest affirmeth the same that the Charters did before the Conquest. And the words both in the one and the other, which shew that the *Thane* might sell or use this Land as he would, do imply an Estate of Inheritance independent of any Lord either feodal or superiour, and was as even the *Alodium* mentioned in the Chapter of *Thanes*; but whether it were descendable only upon the eldest Son, or dividable between all the Sons as in *Gavelkind*, I cannot say, but the Formula of *Alodium* join'd with *Marculfus* doth divide it between them all.

Thane-land charged with a Rent.

^b Conc. Brit. in An. 855 ex Ingulf. Malmesb. & al.

CHAP. XII.

The Fruits of feodal Tenures, and that they were not found among the Saxons, or not after our manner.

Hitherto we have sought our Tenures among the Saxons, and have not found them, tho' the Report^a telleth us, "It is most manifest that they were frequent and common in the times of the Saxons." We will now follow the direction of our Saviour^c, and see if *by the Fruit we can find the Tree*. The Report saith^d, by Question and Answer, "The Fruits of the Tenure (*viz. in Capite and Knight-service*) what are they? but the (1) Profits of the Lands. (2) Wardship. (3) Livery. (4) Premier Seisin. (5) Relief, mistaken to be an Heriot. (6) Fine for Alienation and the rest: Which rest it supplyeth shortly after to be (7) Homage. (8) Fealty. (9) Esuage: Adding again *Relief and Wardship*," instead whereof I out of a third Passage^e do place (10) Escheats. And it concludeth^f that "As all these Tenures were common in those times, so were all the Fruits of them, &c." Which if it be true, the Question is determined; nay, I yield it, if any one of them agreeing directly with our Tenures be found amongst them; some shew of *Fealty* and Licence to alien Lands granted for a certain time only excepted, for avoiding captious Disputation.

Their very Names pretend no Saxon Antiquity, but as the *Ephramites* bewrayed their Tribe by their Language, so by their Names these Fruits discover themselves to be of Norman Progeny. And the Report doth not give us one Instance or Example of any of them in all the Saxon times. If it did, the words before mentioned in the Charters to the *Thanes*, declaring that their Land must be *Libera ab omni seculari gravamine*, &c. sweep all away at once as the West-wind did the Grasshoppers in *Egypt*, and do make the *Thane-Lands* to have the privilege of *Allodium* (here before mention'd) to belong unto them, that is, to be free from all *Tenure and Service*. It is true notwithstanding, that both the *greater and lesser-Thanes* might have, and had other Lands (besides these that were hereditary) of feudal Nature and holden by military Service (as in the Charter of *Oswald* the Bishop shall after appear:) But they holding them like *Folcland* only at the Will of the Lord (whether King or other) or for certain Years, or at most for Life or Lives, their *Tenure and Feuds* determin'd with the Will of the Lord, the term of Years, or Estate for Life. And then could not any of the Fruits before spoken of, accrue unto the Lord that granted the Land, for that it forthwith reverted entirely into his own Hands, and was to be kept and dispos'd a-new as pleas'd him.

It is apparent therefore by this general Demonstration, that the Fruits we speak of, could not arise out of either of the *Thane-Lands*, (were they *temporary* or *hereditary*) if not haply *Fealty* or some Gratuity to the Lord for Licence that the *temporary Tenant* might assign his Interest or have it enlarged, (things proper as well to *Socage* and *Folcland* as to *Feudal*.) But let us examine all these Fruits particularly, and see whether and how we find any of them among the *Saxons*; and give me leave herein to produce them in such Order (tho' not logical) as the Report presenteth them to the Reader in their several Places.

^a Pag. 35. ^b Pag. 36. ^c Matth. xii. 33. ^d Pag. 33. ^e Pag. 36. 37. ^f Pag. 33. ^g Pag. 36. 37.

CHAP. XIII.

No profit of Land by Wardship in the Saxon's time.

AS for the Profits of the Land which the King hath now during the Minority of a Ward, it is manifest that the Kings then had no such of the Thane-lands; for that the Thane had this particular Privilege, that when he dy'd he might make his Will of his own Lands (as it formerly appear-eth) and give them unto whom he would, which was never lawful after the coming of the Normans, for any Baron or Tenant by Knight-service to do; till the Statute 32. Hen. VIII. Chap. 1. gave free liberty to all men to devise all Socage-land by their last Will in Writing; and no more than two parts only of Land holden in Capite or by Knight-service, least it should hinder the Lords too much of their feodal Profits. And Socage-lands were therefore long before devisable in many Burroughs, for that thereby the Lord sustain'd no such prejudice. But to conclude this Point in one Word, it shall (I hope) be made manifest in the next Chapter, that there were no Wardships among the Saxons, and thereupon it will follow invincibly there could be then no Profits of Lands arising to the King or Lords by Title of Wardship.

CHAP. XIV.

No Wardship in England amongst the Saxons.
Objections answered.

IN following the Report I must now speak *de Causa post Causatum*; of Wardship after the Profits of Land growing by it. This being the chiefest Fruit of feodal Servitudes, and the Root from whence many Branches of like Grievances take their Original; the Report laboureth more to prove it to have been in use among our Saxons, than it doth in all the rest of them, and enforceth me thereby to the greater Labour in examining it, and discovering the contrary.

Touching the Name (*Wardship*) I confess it carryeth a Saxon Sound, but for Norman God-fathers with whom *Gard* signifying the same that *Ward* doth with us, and they bringing this Custom into England, our English Ancestors (as in a Multitude of other Words) changed the Norman G. into a W. and so made *Ward* for *Gard*, and thereof *Wardship* for *Gardship*. Yet to this Day we call him that hath the Custody of the Ward, after the Norman Manner his *Gardian* not his *Warden*. But I find neither *Ward*, *Wardship* nor *Warden*, in this Sense, in any Saxon Law, Charter, or Manuscript, or any thing conducing to such Signification: The Proof being in the Affirmative lyeth on the other Side, yet doth not the Report produce one single Case, Text, or Precedent, to maintain their Assertion but like *Pythagoras's* Scholars, resteth wholly upon *ipse dixit*, such and such have said it; and I am now turn'd over to those Authors.

They have chosen a right good Foreman (I confess) *Mr Selden*, of whom I say as she in *Ovid*, *Nomine in Hectorio Pallada semper eram*. But let us hear what he affirms, according as the Report conceiveth him, where the Words

E

Mr. Selden's Judgment be

be thus. "That *Wardships* were then (*viz.* in the *Saxon's* time) in use, and "not brought in by the *Normans*, as Mr. *Cambden* in his *Brit.* 179. nor "by *Henry III.* as *Randolph Hygden*, &c. would persuade. *Vid. Selden's notes* "to *Fortescue*, 51." The Report says *Vide*, and I say *Audi*. Mr. *Selden* to confute their Opinion attributed to *Rand. Hygden* useth these Words. "Ne-
"ther is the Custom of *Wardship* so new as *R. Hygden* in his *Polychronicon*,
"or rather some others not understanding him, ignorantly make it, by suppo-
"sing the beginning of it here under *Hen. III.* clearly *Wardships* were before
"or from the *Normans* at least". Thus Mr. *Selden*. There may be some am-
phiboly in the Word *before*, as doubtful whether it shall relate to the *Normans*
or to *Hen. III.* but the Occasion of his Speech is to confute the opinion of
them that did attribute the Beginning of *Wardships* to *Henry III.* saying, that
clearly they were before, and tho' he determineth not how long before, yet
he concludeth that from the *Normans* at least, citing *Glanvill* to shew they
were in use in *Hen. II's* time, and the *Grand Custumer* of *Normandy* to fetch
them higher than so from the *Normans*, who (by the Opinion of *Berhault*
that writ the Commentary to that *Custumary*) did first bring them into *En-*
gland. Mr. *Selden* (God be thanked) is living to explain himself, and I find
(by chance) where he hath done it fully. His Words in the *Titles of Honour*
be thus, "These kind of military *Fiefs* or *Fees* as we now have, were not
"till the *Normans*, with whom the Customs of *Wardship* in Chivalry (they
"began not under *Hen. III.* as most ignorantly *R. Hygden* the Monk of *Che-*
"ster and *Polydore* tells you) came into *England*". And speaking by and by
of *Malcolm* second King of *Scotland*, who dyed about two and twenty years
before the Conquest, he said: "But in this *Malcolm's* time, *Wardships* were
"not at all in *England*". Thus M. *Selden*, whom they so often press against
me out of ambiguous Places, is clearly with me.

Lambard's
Opinion.

Their next Authority to prove *Wardships* to have been in use amongst the
Saxons, is (saith the Report) that amongst the Privileges granted by *Edw.*
the Confessor to the *Cinque Ports* we meet with this, *That their Heirs shall*
not be in Ward. For this they cite *Lambard's Perambulation of Kent*, p. 101.
but I demand Oyer of the Record, and I verily persuade my self *Nul tiel Re-*
corde, nor in Truth hath *Lambard* averr'd that there is. *Lambard's* Words
be these, "The Privileges of these Ports being first granted by *Edw.* the Con-
"fessor and *William* the Conqueror, and then confirm'd and encreas'd by *Wil-*
"liam Rufus *Hen. II.* *Rich. I.* *Hen. III.* and King *Edw. I.* be great, &c".
And in reciting some of these Privileges, he tells us amongst the rest, "That
"they themselves (the Inhabitants of the *Cinque Ports*) be exempted from all
"Payments of Subsidies, and their Heirs freed from *Wardship* of Body not-
withstanding any Tenure. He doth not say that this is in the Charter of *Ed-*
ward the Confessor, but that it is among the Privileges granted by him and
William the Confessor, and then confirm'd and encreas'd by the succeeding
Kings. Doubtless the Word *Subsidies* here mention'd in this Sense, was not in
use either in the Confessor or Conqueror's time, not in many years after till
Taxes, Aids, and Tallages were grudging at and restrain'd. I am therefore
confident that this came in among the encreased Privileges afterward, and
it appeareth that Mr. *Lambard* was not persuaded that there was such a
Charter of the Confessor's time, and therefore waving it seeketh the Original
of the Privileges of the *Cinque Ports*, no farther then the Conqueror. Why
then do we father this upon the Confessor, especially seeing the Charter of
"Anno 6. *Edw. I.* wherein all the Charters of the precedent Kings seem to
be mention'd, that of *Edw.* the Confessor is not spoken of.

Magna
Charta.

The third Assertion is, that in the Customs of *Kent*, (which are in *Magna*
Charta of *Tottill's* Edition, and in *Lambard's* *Perambulation*) there is a Rule

* P. 37. *Seff.* 160. b *Par.* 11. cap. 8. p. 301. b P. 123, c 124. d *Lib. intrat.* *Tis. Challing.* fol. 1156. e p. 37.
for

for the *Wardship* of the Heir in *Gavelkind*, and that he shall not be married by the Lord. And those Customs say of themselves, that they were *devant le Conqueste, e en le Conqueste*. The words in *Lambard* be *devant le Conqueste, e en le Conqueste, e toutes doures ieskes en ca*. That is before the Conquest, and at the Conquest, and ever since till now: Which word *now* relateth to the 21 of *Edw. I.* there immediately before mention'd. And to save the Credit of the Author, must be favourably understood to be meant of such Customs, as were in use either before the Conquest, or at the Conquest, or at any time since, in the disjunctive not in the aggregative. For if it be taken conjunctively, then is it notoriously false, for some things mention'd in it had their Original under *Hen. II.* as the Grand Assize, and Justice of Eyer; whereof that of Eyer was not instituted till the Council (or Parliament as we now call it) of *Nottingham, An. Dom. 1176, viz.* in the 22 or 23 of *Hen. II.* And for that of the Grand Assize, it is expressly said in the Customs, that it was granted then by *Hen. III.* Many other things there be, as the Office of the Crowner, the manner of *Essoyning*, *Writ of Cessavit*, &c. which I suppose was never heard of before the Conquest. But if you mark it, the words in question, *viz. devant le Conquest, &c.* stand in *Lambard* at a little more distance than the Lines precedent, as if himself conceiv'd them not to belong unto the Text of Customs. And to clear the doubt in the elder Edition published by *Tottill 12. June 1556.* no such thing is mention'd; but if it were, there are such other differences in their Copies as both their Authorities may be question'd, and I in the mean time well delivered from this objection. Let us see what followeth.

Fourthly, For the Antiquity of *Wardships* in *England* and *Scotland*. See Wardship in Scotland. "also (says the Report) *Hector Boet. lib. 2. Buchanan rerum Scot. lib. 6.* and the Laws of *Malcolm II.* which prove the Antiquity of *Wardships* in "Scotland and in *England* before the Conquest. For in those times it is "probable the Laws of both Nations did not much differ; as for the times "after it appears they did not, by comparing their *Regiam Majestatem* with "our *Grainvil*. Neither is the bare Conjecture of Sir *Henry Spelman* sufficient to take away the force of those Laws, *Vid. Spelman's Glossary verbo* "Feudum. Upon all this (saith the Report) they (the Justices of *Ireland*) did "conclude and proceed to Sentence. With the Sentence (as a sacred thing) I will not meddle. But as touching that part of this Argument which — *In Hector Boethius* *nostros fabricata est machina muros* — I'm tyed either to answer or to submit. For *Hector Boethius* therefore, I confess the place to be truly alledg'd, (and that hitherto hath seldom happened) but for the Credit of that Author I wish *Leland* were alive to deliver the censure he hath left upon him with his own Mouth: I forbear it. True it is, he relateth that *Malcolm II.* gave all his Lands well nigh unto his Nobility in Reward of their Service, and that they in Thankfulness to support his Dignity, regranted unto him, *Vardam, Desponsationem, & Releviam ul. Relevatam*, *Wardship*, and Marriage of their Heirs within Age, and Relief of those of full Age. The Paragraph there is long, but to the effect we spoke of. It is also true that *Buchanan* doth report the like, and since him *Camerarius*, and a little before them all *Johannes Major*; but all their harping is from the found of one String, which in the Report is not left unstrain'd, i. e. the Laws of *Malcolm* before mention'd, where it is said, that *ad Montem Placiti in Villa de Scona omnes Barones concesserunt sibi Vardam, & Releviam de Herede cujuscunque Baronis defuncti ad sustentationem Domini Regis*. Which because they concern a noble Kingdom, and have been received as authentical by an ancient Parliament, I will not presume to contradict it. But I humbly offer to the consideration of the Learned of that Kingdom, and to those of ours and theirs that are conversant in Antiquities, these particulars following.

The Authority of Malcolm's Laws questioned.

First, It being agreed (which the Scots affirm) that *Malcolm II.* began his Reign in the year 1004. (i. e. above sixty years before the Normans conquer'd *England*) how it cometh to pass that *Malcolm* used so many Norman words in the Scottish Laws, and whether those words be found in any other Monument there before: For in *England* it was not so.

Secondly, Whether their Kings then had not only a Seal but *Magnum Sigillum* in the Custody of the Chancellor, and *set-fees* appointed for the use of it; for in *England* it was not so, tho' *Edward* the Confessor had a Seal after *Malcolm's* time.

Thirdly, Whether they had *Brevia clausa in cera*, and other ordinary Instruments seal'd *cum Magno Sigillo*, and *Fees* appointed for it; for in *England* it was not so.

Fourthly, Whether they had solemn Presentations to Churches and Hospitals under Seals in that manner; for this was long before the Council of *Lateran*.

Fifthly, Whether they had then the Names of Barons, *Seneschallus*, *Constabularius*, *Marescallus*, (not in use in *England* in the time of the Confessor) as appeareth, for the two latter, by the *Appendix* to the Confessor's Laws^k; and for their *Seneschallus* called their Steward, *Buchanan*^l says he was brought in by *Malcolm III.* into *Scotland*.

Sixthly, Whether the Norman Officers of *Iusticiarius*, *Vicecomes*, *Coronator*, *Ballivus*, &c. were then in use by any other Proof than by or from these Laws; & sic de ceteris.

Many other things I premit, and take no Exception to the frequent mention of *Pounds* and *Shillings*, tho' I think they were scarce with them in *Scotland*; as not abundant then in *England*, but paid in *Truck* and *Cattel*. But I admit that which the Report saith, that in those times it is probable the Laws of both Nations did not much differ. As for the times after, it appeareth they did not, by comparing their *Regiam Majestatem* with our *Glanvil*. They run much (I confess) *paribus vestigiis*, and oftentimes *totidem verbis*, *iisdem paragraphis*. Whether of them leads or follows the other, I dare not define and am loath to dispute. The Preface to the *Regia Majestas* sheweth it to be written at the command of King *David*; whom *Skeneus* in his Annotations calleth the first, and saith, he began to reign *Anno 1124. i. e. 24 or 25 of Hen. I.* And 'tis certain that our *Glanvil* was not written till the time of *Hen. II.* who began not to reign till 1154. so that if this be true, it must needs follow that we took a great part of the Model of our Laws, or at least the Expression of them from the Scots, (which our Ancestors never yet acknowledg'd.) It may perhaps fall out (upon better Examination) that *David I.* may be mistaken for *David II.* But for the part of *Malcolm II's* Laws, which speak of *Wardship*, *Marriage* and *Relief* in *Scotland* at that time to have risen from their own Nobility; *Buchanan* himself recedeth from that Opinion, and concludes, *Hanc morem ab Anglis & Danis potius acceptum credo: Quod in tota Anglia & parte Normanniae adhuc perseveret.* And *Demster* himself their greatest Antiquary, ingenuously confesseth, that there were no Barons in *Scotland* till *Malcolm III.* created them. And he might well take his Precedent from the Conqueror, for he liv'd all the time of the Conqueror, and about seven years after: So that if there were no Barons in *Scotland* in the time of *Malcolm II.* as *Demster* affirmeth, or the Precedent taken out of *England* for *Wardship*, as *Buchanan* believeth; then could not this Law be made in *Malcolm II's* time, but seemeth rather (by both their Opinions) to be ascrib'd to *Malcolm III.* and that the Error hath risen (as easily it may) in writing II. for III. But in the mean time all this makes no Proof against me.

The Agreement of the English and Scotch Laws.

^k Fol. 112. a. ^l Lib. 7. f. 75. b.

CHAP. XV.

No Marriage of Wards.

AS for *Marriage*, it is here and in some other Places mention'd by the Report, but not a Word any where to prove that it belonged to the Lord in the Saxon time. I will help them with what I meet in the old MS. Book of *Ramsay*, Sect. 120. where it is said, that one *Edwine* Son of *Othulf* gave five Hides of Land to Archbishop *Odo*, *Pro eo quod Regem E-dredum inflexer at, ut ei liceret Filiam cujusdam Viri Vtst quam concupiverat, maritali sibi federe copulare.* Here it appeareth that the King's Licence or good Will was sought, but the Reason appeareth not. The good Will of King *Solomon* was sought that *Abishag* might be given to *Adonijah* for his Wife, but not in respect of *Tenure* in either Case. It is an express Law of King *Canutus* (L. 72.) *ne nybe man naðen þiſ ne mæben, &c.* "That no Man should constrain either Woman or Maid to marry otherwise than where they will, nor shall take any Money for them, unless by way of thankfulness some do give somewhat." If these Passages carry any shew of *Wardship*, I must still let you know that *Knights Feet* were not at this time descendable unto *Women* by the feudal Law, no nor long after, when they were become hereditary in the masculine Line, *Ne à Lancea ad Fusum Hereditas pertransiret*, as you may see by *Cujacius in Feud. Lib. 1. Tit. 1.*

Marriage
of Wards.2 Kingi
ii. 21.

The first Law that I meet with touching *feudal Marriages* is in *Magna Charta Libertatum Hen. I.* yet is there nothing spoken of marrying the Heir Male of the King's Tenant within Age. And touching the Female Issue it is only provided, that the King should be so far acquainted with their Marriage, as that he might be assured they should not marry with his Enemies, lest the *Feuds* or *Feifs* which were given for Service against them, should by this occasion be transferr'd to them. Hear the words of the Charter. *Et si quis Baronum meorum, vel aliorum Hominum meorum Filiam suam nuptui tradere voluerit, sive Sororem suam, sive Neptem, sive Cognatam, mecum inde loquatur; sed nec ego aliquid de suo pro hac Licentia accipiam, nec defendam ei quin eam det, excepto si eam velit jungere meo Inimico. Et si mortuo Barone vel alio Homine meo, Filia Heres remanserit, & sine Liberis fuerit, Dotem suam & Maritacionem habebit, & eam non dabo Marito, nisi secundum velle suum &c.* Ordaining, that the Wife shall be Guardian of the Childrens Lands, or some near Kinsman, *qui justus esse debet*; and that other Lords observe the like courses touching their Wards.

When
Marriages
came in.

Thus among the *Normans*. But I don't find in all the *feodal Law* of these times, any thing sounding to this purpose, nor any mention of *Marriage* or *Wardship* of the Body or Lands. I take them therefore to have risen from the *Normans* a little before their coming into *England*, but in a diverse manner, according to the Diversity of the Places, and the moderate or covetous Disposition of the Lords. For it seemeth that tho' the Profits of the Land belong'd wholly to the Lord, and were therefore ordinarily so taken by him; yet some of the Lords deducting only the Charge of Education of the *Ward*, and just Allowances, restor'd him his Lands at full Age, with the surplusage upon Account. And the Grantee of a *Wardship* from the King, was in *Normandy* ryed to do it, as appeareth by the 215. Artic. of the reformed Customs; for otherwise they were not Guardians properly and *Tutores rei Pupillaris*, but *Fructuarii* rather, and *suum promoventes commodum*. See the Comment to that Article.

So

Feudal
Marriage.

So in point of *feodal Marriage*, it seemeth that the Charter of Henry I. was grounded upon the *Norman Custom*, which, tho' it required the Consent of the Lord in tendring of Marriage to Women (for the reason aforesaid) yet did it not permit either him or the Kindred or Friends (whom they called the Parents) to make it *venal*, or to take any thing for the same; as you may see by divers Passages there, and by a Case adjudged in the Comment to the 228. Article, where the Tutor or Guardian and the Parents and Friends thus offending, are all condemn'd to pay Costs and Damages. And note, that (according to the *Norman Custom*) the Consent of the Parents, (*viz.* the next Kindred and Friends) was as requisite as the Consent of the Lord or Tutor, which, as I conceive, gave the occasion of the words *si Parentes conquerantur*, in the Statute of *Merton*^a, as in respect of the ancient Right they had in consenting to the Marriage.

And inasmuch as we don't find that the various Usages touching *Wardship* and *Marriage*, were compos'd into an uniform Law till *Magna Charta* *Henr. III.* did determine it; it may be conceiv'd to have been the reason that *Rand. Higden* before mention'd and our other Authors, did ascribe this part of our *feodal Law* to be introduced by *Henry* the third. But it is manifest by *Glanvil* that it was in use in *Henry II's* time: And by the Charter of *Henry I.* to have been so likewise under *William Rufus*; yet is there nothing hitherto any way produc'd to bring it from the *Saxons*, or to shew it to have been in use amongst them.

CHAP. XVI.

No Livery, no Primer Seisin.

Prærog.
Reg.
cap. 3.

IF the King's Tenant in Capite or by Knight-service dieth, the King shall have his Lands till the Heir hath done Homage; which if he be of full Age, he may do presently: But if he be under Age, the Land must continue in the King's Hands till his full Age. And when either the one or the other sueth to have it out of the King's Hands, his obtaining it is called *Livery*, and the Profits receiv'd in the mean time by the King, are called his *Primer Seisin*. But neither of these could be among the *Saxons*, for that their *hereditary Lands* were not *feodal*, but *Libera ab omni Gravedine*, (as before we have shew'd.) And their *temporary Lands* could not be subject to it, for that their Estate extended no farther than to a *Franck Tenement*. And neither the one nor the other was then tyed to do Homage, as shall appear when we speak of Homage.

After the coming of the *Normans* they were presently afoot among us, even in *William Rufus's* days, but uncertain and irregular; which was a certain note of their Novelty, and that *Feuds hereditary* were new begun. The great Charter of *Liberties* granted by *Henry I.* implyeth as much: Where to moderate them, the King saith thus, *Si quis Baronum meorum seu Comitum sive aliorum qui de me tenent, mortuus fuerit, Hares suus non redimet Terram suam sicut faciebat tempore Fratris mei, sed legitima & iusta Relevatione relevabit eam. Similiter & Homines Baronum meorum iusta & legitima Relevatione relevabunt Terras suas de Dominis suis.* I take this redeeming of the Land out of the King's Hands, to be a Composition for his *Primer Seisin*, and for the *Livery* and *Relief*; things uncertain at this time even in their *Norman* Appellations, and not likely therefore to be known unto the *Saxons*.

^a Art. 228

^b Cap. 6.

CHAP. XVII.

That Reliefs (whereon the Report most relyeth) were not in use among the Saxons; nor like their Heriots.

OF all the Feodal Profits alledged in the Report to be receiv'd by the Saxons, it casteth anchor chiefly on *Reliefs*, as a thing most evident and unanswerable: the rest (save *Wardship*) it scarcely fortifieth with a Breath besides the bare Assertion. This it saith was common; and in pursuit thereof addeth these words. "For *Reliefs*, we have full Testimony in the *Reliefs* of their Earls and Thanes, for which see the Laws of King *Canutus*, Cap. 68, and 69. the laws of *Edw.* the Confessor. cap. de *Heretochiis*, and what out of the book of *Doomsday Coke* hath in his *Instit.* Sect. 103. *Camden* in *Berkshire*, *Selden* in *Eadmer.* 154. Great authorities; *secumque Deos in pœlia ducunt.*" We must not meddle with them all at once, let us try them singly. The law cited out of *Canutus* is in these Words: *And beon ða hepegeata*, "Let the *heriot* (which was to be paid after the death of great men) be according to their dignities. An *Earl's*, eight Horses, (four saddled and four unsaddled) four Helmets, four Corslets, eight Spears and as many Shields, four Swords and two hundred marks of Gold. The *heriot* of a *Thane* next to the King, four Horses (two saddled and two unsaddled) two Swords, four Spears, four Shields, one Helmet, one Corslet and fifty marks. Of the *inferior* or *midling Thane*, an Horse furnished and his weapon, &c. And he that less hath and less may, let his *heriot* be two pound." Here is speech indeed of an *heriot*, but none of *Relief*: I shall anon shew the difference between them, and then hath this Law nothing against me. Touching the Law alledged to be *Edward* the Confessor's, the words be these, *Qui in bello ante Dominum suum ceciderit (sit hoc in Terra, sit alibi) sint ei Relevationes condonate*, &c. Here I confess is mention of *Reliefs*, but I deny this to be the Law of *Edward* the Confessor: 'tis true that it is published by *Lambard* among his receiv'd Laws, but (if you mark it) in a differing letter as noting it to be an addition. In an ancient MS. therefore (which I have) of those Laws, it is not found, nor in the printed copy of *Roger Hoveden*, who wrote till the third year of King *John*, that is 134. years after the Confessor's time. With reverence therefore be it spoken, it is mistaken both in the Report and by my *L^d. Coke* himself, whom it followeth, if they say that these Words were part of the Law of *Edw.* the Confessor, yea, the text itself maketh..... of *William* the younger call'd *Rufus*.

But to conceal no truth, it is delivered by *Jornalensis Monachus* in the very same Words, as a Law of an elder King amongst us than the Confessor; namely of *Canutus* our *Danish* King, who in the 157. Chap. of his Laws (speaking of one slain in battel in the presence of his Lord) saith expressly, *Sint ei relevationes condonate*. Now the Game seemeth to be won; but stay a while, and remember what I said before of the *Translations* of our Saxon Laws and Charters into Latin. The *Saxons* and the *Danes* (whose Language and Laws differ'd little in those Days) wrote their Laws only in their own Tongue, and the translating of them hath begotten much variety and many controversies; we must therefore resort to the Original *Saxon*, were this passage is in the 75th. Chap. of the second Part of his Laws in these Words, *7re man ðe æt ðam fýrþum tofōpan hýr hlaford felle, 7ý hit innan lande, 7ý hit of lande.*

No Reliefs among the Saxons.

Deß-mena mediocris.

beon hepegeata fonggyrene: which is thus, *verbatim*, "The Man that in a military Voyage is slain before or in the presence of his Lord, be it upon Land or off of Land, let the *Heriots* be forgiven him." He saith not, let the *Reliefs*, but let the *Heriots* be forgiven him, and I deny not but this might be one of the *Danish* Laws which *Edward* the Confessor took out of *Canutus's* Laws when he compos'd the *Common Law* out of the *West Saxon* Law, *Mercian* Law, and *Dane* Law, if the copies of them were extant; and it is very probable that *William* the Conquerour (or one of his Sons) did turn that Law of *Heriots* into this of *Reliefs*.

For that which my Lord *Coke* hath out of *Doomsday*, is the same which Mr. *Camden* hath in *Barkshire* touching all that Country. *Ut Tainus vel Miles Regis Dominicus moriens, pro Releviamento dimittebat Regi omnia arma sua, & Equum unum cum sella, & alium sine sella; quod si essent canes vel accipitres, præstabantur Regi, ut si vellet acciperet.* Here is *Releviamentum* us'd in the Conquerours time, (which I doubt not,) but our Question is of it in the time of the *Saxons*. That also cited by and out of Mr. *Selden* is of the same Nature, and one Answer therefore serveth to all the three. Yet by way of Corollary, I shall anon discover another Error of this sort, rising even from *Doomsday* it self and the *Normans* possessing this Kingdom of the *Saxons*, but not well instructed in their Laws and Customs: which is as followeth.

Relevia-
mentum.

CHAP. XVIII.

Differences between Heriots and Reliefs.

Heriots were usual among the latter *Saxons*: *Reliefs* among the elder *Normans* before their coming into *England*. This according to the Custom of the *Feudal Law*, and other Nations: That ordain'd by *Ludovicus al. Clodoveus* King of *France* about the year 511. to tame the *Almans* whom he then had brought to Servitude. I find it not in *England* till the Sovereignty of the *Danes*. The first Laws (which I find) that mention it, are those of *Canutus* before mentioned, who perhaps for the assurance of his Throne us'd this politick Device to have all the Armour of the Kingdom at his Disposition in this manner, when he had dismissed his *Danish* Army. But it falling so out as the *Heriot* being to be paid at or after the death of the *Old Tenant*, and the *Relief* at or before the entry of the *New*; the *Normans* in this did like our Ancestors the *Saxons*, who, because our Christian *Pascha* or *Passover* fell out yearly to be celebrated about the time of the Feast of their Idol *Easter*, call'd our *Passover* by the name of their *Easter*; so they seem to have conceiv'd the *Saxon heriot* to be the same that their *Norman Relief* was, and therefore translated the Word *Heriot* by *Releviamentum* or *Relevium*, and raising the form of their *Feudal Law* in *England*, drew the *Saxon* Customs to cohere therewith as much as might be. But there is great difference between *Heriots* and *Reliefs*; for *Heriots* were *Militia apparatus*, which the Word signifieth, and devised (as I said before) to keep the conquered Nation in Subjection, and to support the publick Strength and military Furniture of the Kingdom: the *Reliefs* for the private commodity of the Lord, that he might not have *inutilem proprietatem* in the Seignory. The *Heriots* were therefore properly paid in Habilliments of War; the *Reliefs* usually in Money: The *Heriot* for the Tenant that died, and out of his goods; the *Relief* for the Tenant that succeeded and out of his Purse. The *Heriot* whether the

Heriots
and Re-
liefs.

Son or Heir enjoy'd the Land or not: the Relief by none but him only that obtain'd the Land in Succession. The Heriot whether the Land were fallen into the Lord's Hands or not: the Relief in old time not unless it were fallen and lay destitute of a Tenant, whose taking of it up out of the Lord's Hands was in that sense called *Relevium* or *Relevatio*, a taking up of that was fallen, according to the French word *Relief*.^a Bracton well observ'd the difference, saying, *Fit quoddam prestatio que non dicitur Relevium sed quasi, sicut Heriotum quasi loco Relevii, & quod dari debet aliquando ante Sacramentum Fidelitatis, aliquando post.* Hotoman saith, *Relevium dicitur honorarium (Munus) quod novus Vassallus Patrono introitus causa largitur; quasi morte alterius Vassalli vel alio quo casu Feudum reciderit, quod jam a novo sublevetur.* (Nov. Leo. 13. de ditione nominat.)

I stand the longer herein, for that not only the Report but even *Doomsday* itself and generally all the ancient Monkish Writers, have confounded *Heriots* and *Reliefs*. Yet I might have saved all this Labour, for nothing can make the Difference more manifest than that we often see both of them are together issuing out of the same Land. But when all is done, neither is *Heriot* nor *Relief* any Badge of Land holden by *Knight's-service* or in *Capite*, for both of them are found in Lands of ordinary *Socage*. Yet I confess that Bracton saith^b, *de Socagio non datur Relevium*; and a little before, *Sed occagio non competit Domino Capitali Custodia nec Homagium: & ubi nulla Custodia, nullum Relevium, sed e contra.* But this serveth my turn very well; for that they in the Report having fail'd to prove that *Reliefs* were in use in the Saxons time, (whereof they affirm'd they had full Testimony) it now inferreth on my behalf that if *Reliefs* and *Wardships* were not in use among the Saxons, that then also *Tenure* by *Knight-service* was not with them.

Besides all this, the *Heriot* was a certain Duty and settled by Law, the *Relief* so various and uncertain, as the Lords exacted what they list'd for it when it fell into their Hands; constraining the Heir of the Tenant, as it were to make a new Purchase of their *Feud*; whereupon the Feudists called this *Relief* not only *Renovatio* and *Restauratio Feudi*, in Greek *παράκλησις*, turning or bringing back of the *Feud* to the former Condition or proper Nature of it; but also *Redemptio*, a Ransoming of it out of the Lord's Hands. That it thus stood with us in *England* by and by after the Conquest, appears by that we have shewed before out of the *Magna Charta* of Henry I.

CHAP. XIX.

No Fines for Licence of Alienation.

Touching Fines for *Licence of Alienation*, it is not said what kind of Tenants among the Saxons did pay them, nor for what kind of Land they were paid. The *Thane-land* hereditary is apparently discharged thereof by the ordinary words of their Charters before mention'd, where 'tis said, that the Owners of Lands may give and bequeath them *cuiunque voluerint*, and that freely, *ab omni mundanis Oblaculo*. *Doomsday* also (as we here shewed) doth testify as much, and so doth the very word *Alodium*, which the ancient Authors attribute to these Lands. So that the *Thane-lands* doubtless were free both from the Fine and Licence.

But as touching *Folcland* and Land holden at will of the Lord, tho' continued in ancient time to their Children after the manner of *Copy-holds*; it is

Fines for Licence of Alienation.

Folcland.

^a Bracton fol. 84. a. num. 1. ^b Verb. Feudal. ^c Fol. 85. n. 8.

no question but that they might both have *Licence for aliening* such Lands, and also pay Consideration for it; as our *Copy-holders* do at this day. I find that one *Brietrick* in the time of King *Ethelred* about the year 984. bequeath'd Legacies of good value unto his Lord's Wife, to intreat her Husband that this *Brietrick's* Will (whereby he had devised many Lands and Goods to Monasteries and divers Men) might stand. And that *Thola* the Widow of *Urke* a *Thane* of *Edward* the Confessor, obtain'd Licence from the same King *Edward*, that she might devise both her Lands and Goods to the Monastery of *Abbotsbury*. But of what Nature these *Licences* were, whether to alienate the Land, or to make a Will, or to give the Land to Monasteries as in *Mortmain*, I cannot determine. If they only intended Alienation, then I understand them only of *Lands* holden (according to the Custom of the Time) at Will of the Lord, or *Folcland*. Yet in that *Thola's* Licence was as well to bequeath her Goods expressly as her Lands; the Licence seemeth to be given therefore to make a Will, which no Man then could do if not a *Thane*. (*Quere.*) But howsoever it be expounded, it must not be extended to the *Thane-lands* or *Land hereditary*, for the reasons before alledged.

And as touching *Fines* for *Licence of Alienation* after our manner (which the Report suggesteth) they could not doubtless be in use among the *Saxons*; for there are not found (as I suppose) here among us before the Time of *Edward* I. and not established afterwards till *Edw. III.* where the King granteth that from thenceforth Lands holden in *Chief*, should not be seized as forfeited (which formerly they were) for *Alienation without Licence*, but that a reasonable Fine should be taken for the same. See the Statute.

CHAP. XX.

No Feodal Homage among the Saxons.

Feodal Homage.

OUR word *Man* and *Homo* in Latin, have for many Ages in old time been used by the German and Western Nations for a Servant or Vassal. And from thence *Hominium* and *Vassaticum*, afterwards *Homagium* was likewise used for *Hominem agere*, to do the Office or Duty of a Servant; (not to signifie *Manhood* as some expound it,) and so also *Vassalagium*. But by little and little all these latter words have been restrained, to note no more than our ceremonial *Homage* belonging properly unto *Tenures*; which I met not with among our *Saxons*, nor any shew thereof in former Ages, unless we shall fancy that the Devil had it in his Eye when he offered to give unto our Saviour all the Kingdoms of the World, if he would fall down and worship him. For here he maketh himself as *Capital Lord*, our Saviour as the *Feodal Tenant*, the Kingdoms of the World to be the *Feud*, the falling (or kneeling) down to be the *Homage*, and the worshipping of him (consisting as the *Feodists* expound it in six Rules of Service) to be the *Faalty*. Pardon me this Idleness, but from such Misemblances rise many Errors.

Homage two-fold.

Homage (as we understand it in our Law) is of two sorts: one more ancient than the other called *Homagium Ligeum*, as due unto the King in respect of Sovereignty, and so done (*more Francico*) to King *Pipin* by *Tassilo* Duke of *Bavaria* about the year 756. The other *Homagium feudale* or *prediale*, belonging to every feodal Lord, and not begun in *France* till *Feuds* were there made hereditary by *Hugh Capet*, nor in *England* till *William* the Conquerour did the like, as before appears. The Reason of it was to preserve the me-

* *Peramb. Kent*, Tit. *Mepham*. * *Coke Instit. par. 1 Sect. 85. fol. 64. b.*

mory of the Tenure and of the Duty of the Tenant, by making every new Tenant at his entry to recognize the Interest of the Lord, lest that the *Feud* being now *hereditary* and new heirs continually succeeding into it, they might by little and little forget their Duty, and substract their Services, deny at last the Tenure it self. We see at this day frequent Examples of it; for by neglecting of doing Homage and those Services, Tenures usually are forgotten and so revolv'd to the King by *Ignoramus*, to the great Evil of their Posterity that neglect it.

But the *Saxons* having only two kind of Lands, *Bocland* and *Folcland*, neither of them could be subject unto Homage: for the *Bocland* (which belong'd properly to their *greater Thanes*) tho' it were *Hereditary*, yet was it *Alodium* and *libera ab omni seculari gravamine*, as before is shewed, and thereby free from Homage. And the *Folcland* being not otherwise granted by the King or his *Thanes* than at will, or for years, or for Life, the Tenant of it was not to do any Homage for it. For Justice *Littleton* biddeth us note, that none shall do Homage but such as have an Estate in *Fee Simple* or *Fee Taile*, &c. "For (saith he) 'tis a maxim in Law, that he which hath an Estate but " for term of Life, shall neither do Homage nor take Homage".

Neither Bocland nor Folcland subject to Homage.

But admit the *Saxons* had the Ceremony of doing Homage among them, yet was it not a certain mark of *Knight-service*: for it was usual also in *Socage-Tenure*. And in elder Ages, as well personal Duty as a predial, that is done to Princes and great Men, either by *compulsion* for Subjection, or *voluntary* for their Protection, without receiving any *Feud* or other Grant of Land or Benefit from them. And he or they which in this manner put themselves into the Homage of another for Protection sake, were then called *Homines sui*, and said *commendare se in manus ejus* or *commendare se illi*, and were there-upon sometimes called *Homines ejus commendati*, and sometimes *commendati* without *Homines*, as in *Doomsday* often c. Tho' we have lost the meaning of the Phrase, yet we use it even unto this Day; *Commend me unto such a Man*, which importeth as much as (our new compliment taken up from beyond the Seas) *let him know that I am his Servant*. See the quotations here annexed, and note, that tho' the *Saxons* did (as we at this Day) call their Servants and Followers *Homines suos*, their Men; yet we no where find the word *Tenure*, or the ceremony of Homage among them, nor any speech of doing or of respiting Homage.

CHAP. XXI.

What manner of Fealty among the Saxons.

SO for Fealty: if we shall apply every Oath sworn by Servants and Vassals (for Fidelity to their Lord) to belong unto Fealty, we may bring it from that which *Abraham* imposed upon his Servant, *put thy Hand under my Thigh, and swear*, &c. For the *Saxons* abounded with Oaths in this kind, following therein their Ancestors the *Germans*, who, as *Tacitus* saith, took *principium Sacramentum*, a principal Oath to defend the Lord of the Territory under whom they lived, and to ascribe their own Valour to his Glory. So likewise the *Homines commendati* before mention'd, yea, the *Famuli ministeriales* and Household Servants of Noble Persons, were in ancient times and within the Memory of our Fathers, sworn to be faithful to their Lords.

These and such other were anciently the Oaths of Fealty, but *illud postremo observandum* saith *Bignonius* (a learned French-man of the King's great Council) *Fidelitatem hodie quidem Feudi causa tantum præstari*; shewing

All Oaths not Fealty.

No Fealty but for a Fee.

b Tenures lib. 2. Cap. 1. §. 90. c Norf. Terra Will. Ep. & Terra Eid. fil. Spirawic. d Germ. §. 46.

farther that *Fealty* was first made to Princes by the *Commendati* and *Fideles*, without any Feud given unto them, and that the Princes afterwards did many times grant unto them *Feuda vacantia*, as to their Servants: But whether the Oath of *Fealty* were so brought in upon Feodal Tenants, or were in use before, he doth not determine. In the mean time it hereby appeareth, that *Fealty* in those days was *personal* as well as *feodal* or *predial*, which imposeth a necessity upon them of the contrary Part in the *Report*, that if they meet with *Fealty* among the Saxons, they must shew it to be *feodal* and not *personal*; for otherwise it maintaineth not their assertion. I will help them with a pattern of *Fealty* in those times, where *Oswald* Bishop of *Worcester* granting the Lands of his Bishoprick to many and sundry Persons for three lives, reserv'd a multitude of services to be done by them, and bound them to swear, That as long as they held those Lands, they should continue in the commandments of the Bishop with all subjection. I take this to be an Oath of *Fealty*, but we must consider whether it be *personal* or *predial*. If *personal*, it nothing then concerneth *Tenures*, and consequently not our question. If *predial*, then must it be inherent to the Land, which here it seemeth not to be, but to arise by way of contract. And being *predial* must either be *feodal*, as for Land holden by *Knight-service*; or *Colonial* as for Lands in *Socage*. If we say it is *feodal*, then must there be *Homage* also as well as *fealty*, for *Homage* is inseparable from a *Feud by Knight-service*: but the Estates here granted by *Oswald* being no greater than for Life, the Grantees must not (as we have shewed) either make or take *Homage*. And being lastly but *Colonial* or in *Socage*, it is no fruit of a *Tenure in Capite by Knight-service*, nor belonging therefore to our Question. So that if *Fealty* be found among the Saxons, yet can it not be found to be a fruit of *Knight-service in Capite*, as the *Report* pretendeth it. See *Fidelitas* in my Glossary.

CHAP. XXII.

No Escuage among the Saxons. What in the Empire.

Scutagi-
um.

THE word *Scutagium* and that of *Escuage*, is of such novelty beyond the Seas, as I find it not among the *Feudists*, no not among the *French* or *Normans* themselves, much less among the *Saxons*. Yet I meet with an ancient Law in the *Novella* of *Constantine Porphyrogenita* (Emperour of Greece in the year 780.) that gives a specimen of it, though not the name. *Quedam esse Prædia militaria, quibus coheret onus Militiæ, ita ut Possessorem necesse sit se ad Militiam comparare Domino indicante delectum: vel si nolit aut non possit se ad delectum exhibere, certum eo nomine Pecuniam sibi dependere, quæ Feudorum omnium Lex est, &c.* This tells us, that there were certain Lands to which the burden of Warfare was so adherent, that every Owner of them was tyed, upon Summons made by his Lord, to make his appearance therein, or else to pay certain Money by way of a Fine, as was common in all cases of Feodal Tenures.

Summons
in the
Empire.

This hath some shew of our *Escuage*, and might well have taken that name from the manner of Summons used in the Empire; which was by erecting a Post or Pillar, and hanging a Shield at the top thereof, on which proclaiming that all who held in this manner should at such a day attend the Emperour in his Voyage to Rome, for taking the Crown of Italy, or King of Romans; which the *Ligurine* Poet thus expresseth,

* *Proem. in Lib. 1. pag. 7.* * *Gunter. de Gest. Freder. 1. Lib. 1. p. 301.*

Ligno suspenditur albe
Erecto Clypeus: Tunc Princeps Regius omnes
Convocat a Dominis Feudalia Jura tenentes, &c.
 as we have shew'd in our Glossary *Verbo Feudum*. He useth *Clypeus* for a Shield, instead of *Scutum*; and from this Shield I say it might well be called *Scutagium*, as also from the Service performed in it *cum Hasta & Scuto*. Yet this Summons was not called *Schiltbannum* but *Heribannum*, that is *Indictio Exercitus*, not *Indictio Scuti*.

But to keep nearer the matter. First, our Saxons neither used the Name nor the Rules of the Norman *Escheage*; for they called their going to War upon legal Summons, *upbræpe* and *utbræpe*, in Latin *Expeditionem* and *Professionem*. Secondly, they were not tyed to any definite time of Abode, as for forty days, or more or less, but as the Law saith, *ppa a ðon ðeapn* *ry þon gemenelicne neode*, so as need shall require for common Necessity. Thirdly, the Mulet or Forfeiture that the Tenant in *Escheage* incurred for not going forth upon that Summons, was uncertain among the Normans and us, till the Parliament assign'd it; but among the Saxons he that offended in *Ferdwite*, that is, in not going forth in the Expedition, was certainly fin'd at 120^s. Fourthly, whereas every Lord among us had the Fine assign'd by Parliament of his own Tenant for the Lands holden of himself; the King among the Saxons had the Fine aforesaid of every Delinquent, whose Tenant or Follower soever he were, by all the Laws of the Kingdom^d, that is to say, by the *West-Saxons* Law, by the *Mercian*, and by the *Dane* Law; tho' otherwise they differ'd in their *Heriots*, and many particular Customs. So that to talk of *Escheage* among the Saxons, is without all Colour or Probability as I take it.

CHAP. XXIII.

No feodal Escheate of hereditary Lands among the Saxons.

Escheats (of *Eschoeir* in French) signifieth things coming accidentally as on the by, or by chance. The Feodists therefore call them *Caduca* (*a cadendo*) and *Encadentias*; the black Book of the Exchequer *Escheatas*, *Excidentia* and *Excadentia*: But among our Saxons I find no word to express them either properly or paraphrastically. In our Law they be of two sorts, *Regal Escheats* and *Feodal*. *Regal* are those Obventions and Forfeitures which belong generally to Kings by the ancient Right of their Crowns and supreme Dignity. Thus King David gave the Lands of *Mephibosheth* accused of Treason, unto *Ziba* (tho' too hastily.) *Feodal* are those which accrue to every feodal Lord as well as to the King, by reason of his *Seignary*, and of all the Fruits of *Tenure* none so great as this (if we may call it a *Fruit*) where the *Feud* or *Tree* it self resuteth back unto the Lord. Let us see therefore if we find any of these *Feodal Escheats* among the Saxons.

There is a shrewd Tent (I confess) in *Canutus's* Laws. *Qui fugiet a Domino suo vel Socio pro Timiditate in Expeditione navali vel terrestri, perdat omne quod suum est, & suam ipsius Vitam, & manus mittat Dominus ad Terram quam ei dederat, & si Terram hereditariam habeat, ipse in Manum Regis transeat.* Here is the Appearance of a *Tenure*, of a *Feud*, of a *Forfeiture*, and of an *Escheat*. The *Tenure* lyeth between the Lord and his

Escheats.

Canutus's Law examined.

^c Canut. Ll. ca. 10. ^d Canut. Ll. ca. 12, & 13. ^e Ibid. ca. 69.

fugitive

fugitive Vassal, whom the Saxons and Germans called his *Man*, we his *Tenant*; the *Feud* in the Land, *quam Dominus ei dederat*; the *Forfeiture*, *in fugiendo*, in the Vassal's running away; and the *Escheat*, in the Lord's seizing of the Land: *Manus mittat Dominus in Terram quam ei dederat*: Let the Lord take back the Estate which he gave in the temporary *Feud*: But for the hereditary Land, he saith, *transcat* (non *redeat*) *in Manum Regis*. All this is nothing in our Case; for I declared in the beginning that our Question was fix'd upon such *Feuds* as the Law of *England* taketh notice of at this day, that is, of *Feuds* after they were become *hereditary* and perpetual, not of those mention'd by *Gerardus Niger*, which were temporary as at Will of the Lord, or for Years, or for Life, like them here intended by *Canutus*. This very Law observeth the Difference, and discovereth also that *Feuds* were not *Hereditary* in his time, and therefore giveth the *feodal Land*, being but a temporary Estate, back unto the Lord (in whom the *Reversion* was by Inheritance) as a *feodal Right*, but giveth the hereditary Lands unto the King as a *regal Escheat*; for that there was no mean or intervenient Lord to claim them by any *feodal Tenure*, for that the hereditary Lands among the Saxons (otherwise called *Bocland*) were holden of no Body, nor subject to any *feodal Service*, (as we have often declared) and could not therefore *Escheat* unto any *feodal Lord*. The *Kentish Custom of the Father to the Bough and the Son to the Plough*, suggesteth as much, and sheweth also to have been the general use of *England*, till the Conquerour introducing hereditary *Feuds*, put upon us therewith these greater *feodal* Servitudes of *Wardship*, *Marriage*, *Escheats*, &c. So that the hereditary Lands not being *feodal* in the Saxon's time, nor the *feodal Lands* hereditary, there could then be no *feodal Escheats* among them. And I take it to be considerable whether the Land resumed by the Lord upon his Vassal's running away, be properly an *Escheat* by the Law of *Canutus*, or rather a Penalty only impos'd in this particular Case.

CHAP. XXIV.

Thaneland and Reveland what: no marks of Tenure but Distinctions of Land-holders.

Thanelands.

Here is yet another Assertion, rather shewed than proved, 'That the *Thani majores* or *King's Thanes*, held by personal Service of the King's Person by *Grand Serjanty* or *Knight-service in Capite*. And the Reason following is, that the Land so held was in those times called *Thaneland*, as Land holden in *Socage* was called *Reveland*: So frequently in *Doomsday*^b, *Hæc Terra fuit Terra Regis Edwardi Thaneland, sed postea conversa est in Reveland*; *Coke's Instit.* §. 117. Thus the Report dischargeth it self upon my Lord *Coke*, whose words be these, "It is to be observ'd that in the Book of *Doomsday*, Land holden by *Knight-service* was called *Thainland*, and Land "holden by *Socage* was called *Reveland*". I reverence the Opinion of that famous Lawyer with Admiration, but I suppose he speaketh not this *ex Tripode juridico*; for it is impossible, that it and that which is before deliver'd out of the very Charters of the Saxon Kings themselves, should stand together, *viz.* That their *Thanelands* should be *libera ab omni seculari Gravedine*, and yet be subject to that which of all other was most grievous, *viz.* our *Knight-service in Capite*. It may be answered, (as the Report^c in another place delivereth positively) "That *Tenure in Capite* cannot be transferr'd or extinct by Release or Grant; for it is an incident inseparably annexed to the Crown". The

^a Report p. 34.^b Herefordsc.^c Pap. 25. l. 2.

wer were good if once they had made it appear that both this *Tenure* and this *Law* were in force in the *Saxons* time. There is nothing shew'd to prove that Suggestion, and were it true I should desire no better Argument on my behalf than what the place it self bringeth with it. For if *Thaneland* were converted into *Reveland*, and that *Reveland* signify *Socage-land*, then it is as manifest as the Sun, that *Thaneland* did not signify Land holden by *Knights-service in Capite*; for if it did, then could it not decline into *Socage-Tenure*, as their own *Maxime* doth demonstrate.

If there be a Cloud before this Sun, I shall remove it also. My Lord Coke, citing this place out of *Doomsday*, noteth in the Margin *Herefordst.* but delivereth both the Title and the Text by halves. The Title is *Hereford Rex*; the Text thus; *Hæc Terra fuit tempore Edwardi Regis Tainland, sed postea conversa est in Reveland. Et idem dicunt Legati Regis quod ipsa Terra & Censur qui inde exit, furtim auferatur Regi.* The very Title discovers the *Tenure*, for if it be *Terra Regis*, (as the word *Rex* declareth it) then it is plainly *ancient Demesne*, and every Lawyer will tell us, that in *ancient Demesne* there was no *Tenure* by *Knight-service*, but wholly in *Socage*. So that this Cloud now vanisheth into the Air, and our *Tainland* is clearly discovered to be but *Socage*. I shall speak more of it afterwards.

But what Constructions shall we now find for the words in *Doomsday*, *Tainland conversa est in Reveland. (Hoc Opus, hic Labor est.)* It is sufficient for me to have quit my self of the Objection; they must seek some new Interpretation. Yet will I help them what I can in that also: I suppose that the Land which is here said to have been *Thaneland*, *T. E. R.* and after converted into *Reveland*, was such Land as being reverted to the King after the Death of his *Thana*, who had it for Life, was not since granted out to any by the King, but rested in charge upon the account of the *Reve* or *Bailiff* of the Mannour, who (as it seemeth) being in this Lordship of *Hereford*, like the *Reve* in *Chaucer*, a false Brother, concealed the Land from the Auditor and kept the profit of it to himself; till the Surveyors, who are here called *Legati Regis*, discovered this Falshood and presented to the King, that *furtim auferatur Regi*, as by the words in the latter part of the Paragraph (which my Lord Coke reciteth) appeareth. Besides all this, why should the coming of these Lands into the *Reve's* accompt, alter the Nature of the *Tenure*, seeing all Men know that the *Reves* and *Bailiffs* of Mannours govern and dispose the Lands thereof, as well which are holden by *Knight-service* as those in *Socage*.

As for the old French *MS. Customary* (which they affirm doth mention *Tenures by Knight-service* long before the *Saxons*, even in the time of the *Britains*;) I doubt not but there may be such a Passage in it; for the Law which they ascribe to *Edward the Confessor* for proving *Fends* to be in use in his time, affirmeth also that the *Laws, Dignities, Liberties, &c.* of the City of *London* were at that day the same which were in *Old Great Troy*. But as they in the Report wave the one, so I take them both for *Romances*, and pass them over as not worth an Answer.

Having thus particularly answered every Argument, Inference and Objection, produced in the Report, to prove our *Fends* and *Form of Tenures* to have been in use amongst our *Saxons*; I shall now conclude that it neither was nor could be so, unless we shall assume that our poor illiterate *Saxons*, (in a Corner of the World) were the Authors of the *feodal Law*, and gave the Precedent thereof to the *Germans, Longobards, French, Italians*, and the *Empire*. For in none of these was it otherwise extant (till about the end of our *Saxon Monarchy*;) then by such Budds and Branches as we formerly have expressed out of *Cæsar, Tacitus*, and some other.

Coke's Citation false.

Sense of *Doomsday*.

Tempore *Edwardi Regis*.

The French Customary.

CHAP. XXV.

How the Saxons held their Lands, and what obliged them to so many kinds of Services.

IT cometh now in Question, how the Saxons held their Lands, and what obliged them to that Multitude of Services which lay upon them both in War and Peace.

Tenures.

As for *Tenures*, I still say that they had not the Name in use among them, yet (like the *Jews*, the *Greeks*, the *Romans*, and other ancient Nations) a Multitude of Services, whereof some were *personal*, and some *predial*.

Personal Services.

Personal Services were those which a Man did for his Person or personal Estate, either generally to the King and Common-wealth in publick Occasions, as in the *Trinodi Necessitate*, &c. or particularly to his own Lord upon particular Agreement between them, like the *Commendati* before mentioned, and some ministerial Officers and domestick Servants.

Predial Service.

Predial Service was that which was done after the same manner (to the King or his Lord) for Land only; and this was of three sorts, *Alodial*, *Beneficiary*, and *Colonial*.

Alodial Service.

Alodial Service was that which the *greater Thanes* and other who had *Alodial Land* (otherwise called *Borland*, and as I take it *Gavelkind* and *hereditary Land*) were tyed to do *pro Bono publico* to the King and Common-wealth, in respect of those Lands; tho' by the *feodal Law* that kind of Land was free from all *Tenure* and *feodal Service*. I should not therefore use this Solecism to call them *Services*, if the Dialect of our Law afforded me some other fit expression; but the *Saxons* themselves term'd them *Land-rights* not *Services*, of which sort were the *Trinodi Necessitas* of *Expedition*, *Burghbote* and *Brigbote*, the Guarding of the Sea and of the Peace, attendance upon the King's Summons for his Park or Palace before expressed, and besides them all the Tribute of *Danegelt*, &c.

Beneficiary Services.

Beneficiary Services were those, which were done by the *middling* or *lesser Thanes* to the King, and the *greater Thanes* either *militarily* in War, or *ministerially* in Peace, for those Portions of *Outland*, which being granted to them temporarily (as at Will of the Lord or for Life or Lives) were then called *Beneficia*, but being extended after to perpetuity, they were named by the Norman *Feoda*. The Creation, Manner, Variety, and Multitude of them, you shall see in the Charter of Bishop *Oswald*, by and by ensuing.

Colonial Services.

Colonial Services were those which were done by the *Ceorls* and *Socmen*, (that is Husbandmen) to their Lords (the King and Thanes) of all sorts, for some Portions also of their *Outlands*. These were after called *Feoda rustica* beyond the Seas, with us *Socage Lands*, and were holden at Pleasure of their Lords, either by rendering part of the Profits thereupon growing or reared, as *Victuals* especially, in *Saxons* called *Peorms*, &c. (whereof see the Rates in the Laws of King *Ina*, Chap. 70.) or by doing some Works of Husbandry upon the Lord's *Inlands* now called his *Demeans*, as Tillage, Carriage, Harvest-works, &c.

Among all these Diversities of Services, none cometh so near to the Nature of *Feuds* and *Tenures*, as the *Beneficiary* do. Let us therefore consider them the more seriously by that notable Pattern of them left unto us from Bishop *Oswald*, who dividing much of the Land of his Church of *Worcester* into those kind of Portions, which after the *feodal* Word then in use he called *Beneficia*, granted the same unto his *Thanes* and Followers, not by the Name of his

his

his *Milites* or *Tenentes*, but of his *Fidos Subditos*, for the term of three Lives (according to the manner which they retain in those parts even to this day) and reserving to his Church and Successors not *Homagium* & *Servitium*, the material words in *Tenure* to create *Knight-service* in the *Feodal Law*, but the *Services* mentioned in his Charter *secundum Conventionem cum eis factam* & *Sponsionem suam*, as the very words are there expressly. But hear the Charter or rather Epistle as he himself calleth it, which the King confirmed, and a Council. The *Aranga* or Preamble of it is a thankful acknowledgment of King *Edgar's* Bounty and Goodness to him (the Bishop) and his Church: the Conclusion (after the manner of those times) a Curse and heavy Imprecation against all such as shall spoil or violate the same. Both which being long and nothing to our purpose, I think convenient here to pretermitt. The rest is as followeth under the Title given it in the Manuscript.

CHAP. XXVI.

The Charter whereby Oswald Bishop of Worcester disposed divers Lands of his Church after the Feodal manner of that time, entituled,

Indiculum Libertatis de Oswaldes-Lawes-Hundred.

Domino meo charissimo Regi Anglorum Edgardo, Ego Oswaldus Wigornienſis Eccleſiæ Episcopus, &c. Quare quomodo fidos mihi Subditos Telluribus quæ meæ traditæ sunt potestati per spatium temporis trium Hominum, id est duorum, post se Hæredum, condonarem, placuit tam mihi quam ipsis Fautoribus & Consiliariis meis, cum ipsius Domini mei Regis Licentia & Attestatione, ut Fratribus meis Successoribus scil. Episcopis per Chirographi cautionem apertius enuclearem, ut sciant quid ab eis extorquere jussu debeant secundum Conventionem cum eis factam, & Sponsionem suam; unde & hanc Epistolam ob Cautelæ causam componere studui, nequis malignæ Cupiditatis instinctu hoc sequenti tempore mutare volens, abjurare a servitio Ecclesiæ queat.

Hæc itaque conventio cum eis facta est, ipso Domino meo Rege annuente, & sua Attestatione Munificentie suæ Largitatem roborante & confirmante, omnibusque ipsius Regiminis Sapientibus & Principibus attestantibus & consentientibus, hoc pacto eis Terras sanctæ Ecclesiæ sub me tenere concessi; Hoc est ut omnis equitandi Lex ab eis impleatur, quæ ad Equites pertinet, & ut pleniter persolvant omnia quæ ad fuis ipsius Ecclesiæ jussu competunt, scil. ea quæ Anglice dicuntur *Ciricecott* & *Toll*, id est *Thelonium*, & *Tacc*, id est *Swinseade*, & cetera jura Ecclesiæ, nisi Episcopus alicui eorum quid pardonare voluerit, seseque quamdiu ipsas Terras tenent in Mandatis Pontificis humiliter cum omni Subjectione perseverare etiam jurejurando affirmant.

Super hæc etiam ad omnis Industrie Episcopi Indigentiam semet ipsas præsto impendant, Equos præsent, ipsi equitent, & ad totum piramicum opus Ecclesiæ Calcis atque ad Pontis ædificium ultro invenientur parati. Sed & Venationis sepem Domini Episcopi ultronei ad ædificandum repperiantur, suæque quodocunque Domino Episcopo libuerit Venabula destinent venatum.

Insuper ad multas alias Indigentie Causas quibus opus est Domino Antistiti sepe furnisci, sive ad suum Servitium sive ad Regale explendum: semper illius Archiductoris Dominatui & Voluntati, qui Episcopatu præsidet, propter Beneficium quod illis præstitum est, cum omni humiliate & subjectione subditi fiant, secundum ipsius Voluntatem, & Terrarum quas quisque possidet quantitatem.

G

Decurso

*Decurso autem prefati temporis curriculo, vii. duorum qui post eos quæ
 eas modo possident Heredum Vita spatio, in ipsius Antecessoris sit arbitrio,
 quid inde velit, & quomodo sui velle sit, inde ita fiet, si ad suum opus eas
 retinere si sic sibi utile judicaverit, seu eas alicui duntaxat præstare, si sic sibi
 placuerit, velit, ita duntaxat ut semper Ecclesie Servitium pleniter præstet
 (fati sumus) inde persolvantur. Ast si quid prefatorum delictis prævaricationis
 causa defuerit Furum; Prævaricationis delictum secundum quod Præfatus
 Jus est, emendet: aut illo quo antea positus est. Dono & Terra carcat. hoc
 Siquis vero Diabolo instigante, &c.*

The im-
 port of
 the Char-
 ter.

The sum of all aforesaid is, that the Bishop's Tenants shall pay and do as followeth:

First, That they shall perform all Duties that belong to Horsemen.

That they shall pay all things that are due unto the Church, and perform all other Rights that belong to it.

That they shall swear to be in all humble Subjection at the Command of the Bishop, as long as they shall hold these Lands of him.

That as often as the occasion of the Bishops shall so require, they shall present themselves to be ready for it, and shall both furnish him with Horses and ride themselves.

That of their own accord they shall be ready to perform all the Work about the Steeple of that Church, and for the building of Castles and Bridges.

That they shall readily help to fence in the Bishop's Parks, and to furnish him with hunting Weapons, when he goeth a hunting.

That in many other cases when the occasion of the Lord Bishop shall require, whether it be for his own Service or for the King's Service, they shall in all Humbleness and Subjection be obedient to the chief Captain or Leader of the Bishoprick for the * Benefit done unto them, and the Quantity of Land which every one of them possesseth.

* Or Fee
 granted.

That after the Expiration of the three Lives, the Land shall return again to the Bishoprick.

That if there be any Defect in performing the Premises by reason that some shall vary or break the Agreement, the Delinquent shall make Satisfaction according to the Justice of the Bishop, or shall forfeit the Land which he had of his Gift.

I suppose that this was the common manner of Grants and Reservations in those times, and that they were not made otherwise than for Life or three Lives, for so I find them in the Abby-books. And I also suppose that they to whom these Lands were granted, were the *Thani Episcopi & Thani Ecclesie* spoken of in *Doomsday-book*, and that the Lands themselves were such as in the same Book are usually called Thane-lands, *Ecclesie, Episcopi* and *Abbatie*.

But I see they were laden with many Services which the Lands of the King's Thane, in respect of his Dignity and Person, were free from. Therefore when this very Bishop by another Charter granted *tres Cassatas*, three Hydes of Land in *Cungle*, *cuidam Ministro Regis*, to one of the King's Thanes nam'd *Alfwold*, and to his Mother (if she surviv'd) during their Lives, he put no Service upon the King's Thane, but saith *plena gloriatur Libertate, excepta Expeditione rata, Pontis Arcisque Constructione*, the common Exception in Grants unto the King's Thanes as before appeareth, and yet the Services thereby excepted belonged not either to the Bishop or the King himself, otherwise than *pro Bono publico* and common Necessity.

After all this I beat still upon the old String, that here yet is nothing to prove *Wardship* or *Marriage*, or (as the Law then stood) a *Tenure by Knights-service*: for we have made it manifest that *Expedition* and building of *Castles* and *Bridges* were no *Feodal Services*, nor grew by *Tenure*. And as for these that were tyed to ride and go up and down with their Lord, *Baraterias*

an old Feudist saith, that a Knight's fee may be given to a *Vassallus in diebus festis cum Uxore Domini ad Ecclesiam vadat*, and the feudal Law it self inferreth as much, *Lib. 2. Tit. 3.* But our *Bracton* speaking of our Law here in *England (de invest. Feud.)* in his time touching his Tenants, calleth them *Rodknights* alias *Radknights*, *Lib. 2. Cap. 35. n. 6. ut si quis debeat equitare cum Domino suo de Manerio in Manerium*; and saith not that it is Knight-service, but that it is a *Servantie*, and that although such sometimes do *Homage*, yet the Lord shall not have *Ward* and *Marriage*. Admit notwithstanding that it were *Knight-service*, and that the Lands thus holden were *Knight-fees* during the Life of the Tenant, yet where is the *Wardship*, *Marriage* and *Relief*? Who shall undergo these *Servitudes*, since the Tenure and all the Services are determin'd with the Life of the Tenant?

CHAP. XXVII.

Inducements to the Conclusion.

Seeing then that neither the greater *Thanes* nor the lesser *Thanes* among the *Saxons* were subject to the Rules of our *Knight-service*; upon whom then (if it were in use among them) did it lye? For as touching the Clergy it is said in the Laws of *Edw. the Confessor*, cap. 11. that the King and the People *magis in Ecclesia confidebant Orationibus quam in Armorum defensionibus*. And the Report it self confesseth (*pag. 3. in pede*) "That the Possessions of Bishops and Abbots were first made subject to *Knight-service* in *Capite* by *William the Conquerour* in the fourth year of his reign: for their Lands were held in the times of the *Saxons*, *In pura & libera elemosina*, free *ab omni Servitio seculari*. Though this be not true in the latter Part, being strictly taken; (for no doubt their Lands were subject to the *Trinodi Necessitas*, viz. *Expeditioni*, *Pontis Arcisque Constructioni*, as before appeareth,) yet cometh it very fitly to my purpose: for hereby it is evident that if the *Trinodi Necessitas* made no Tenure by *Knight-service* or in *Capite* in the Church Lands, then neither did it in the *Thane-lands* (as before we have shew'd) and then much less in the Land of *Churles* and *Husbandmen* commonly call'd the *Socmanni*; for it is agreed on all hands that their Lands were holden no otherwise than by *Socage*. Therefore if all *Kent* in the *Saxon's* time were *Gavelkind*, then could there be no Tenures by *Knight-service* in all that County. For *Glawvil (Lib. 7. c. 3.)* telleth us, "That where the inheritance is divideable among the Sons, it is *Socage*: And his Reason is, because that where 'tis holden by *Knight-service* the *Primogenitus succedit in toto*. This *Kentish* Custom was *ab initio* the general Law of *England*, and of all Nations, *Jews*, *Greeks*, *Romans*, and the rest, and so continueth even till this Day, where the *Feodal Law* hath not altered it; which first happen'd here in *England*, when the *Normans* introducing their *Feuds* settled the whole inheritance of them upon the eldest Son, which the ancient *Feodal Law* it self did not (as we before have noted) till *Feuds* were grown perpetual. The Reason as I take it that begat this alteration, was for that while the *Feud* did descend in *Gavelkind* to the Sons and Nephews of the *Feodatorie*, the Services were suspended till the Lord had chosen which of the Sons he would have for his Tenant, and then it was uncertain whether the party chosen would accept of the *Feud* or not; for sometimes there might be Reasons to refuse it.

* *Lib. de Feud. Cap. 1. p. 8.*

To return where I left; it makes to the proof of all this that has been said, and (for conclusion) seems to be unanswerable, that the old inheritance which in the Saxons time belong'd to the Crown, call'd in *Doomsday Terra Regis*; and in the Law books *Ancient Demesne*, containing a great Part of every County, had not any Lands within it (or within any mannor thereof) holden by *Knight-service*. For *Fitz-Herbert* saith, that *Nul terres sont ancient demesne forsque terres tenus en Socage*. And therefore if the Tenant in ancient Demesne will claim to hold of the Lord by *Knight-service*, it is good cause to remove the Plea; because that no Lands holden of a Mannor which is *ancient Demesne* are holden by other Services of the Lord than by *Socage*: for the Tenants in *ancient Demesne* are call'd *Socmanni*, that is to say, *Tenants del carue*, Angl. *le plough*: Thus saith *Fitz-Herbert*. Now if in the Mannors of the King himself, there were then no Lands holden by *Knight-service* throughout all England, it will then in all probability follow, that there were none likewise among his Subjects in the Saxons time, and consequently that our *Feudal Law* was not introduc'd before the Conquest. Mr. *Camden* by their own Confession is of the same Opinion; and Mr. *Selden* himself whom they alledge against me, is clearly with me; as before I have shew'd.

Bracton.

If these our three Opinions avail nothing, we have yet a fourth to strengthen us, great *Bracton* the most learned in our ancient Laws and Customs, that hath been in this Kingdom; who speaking of *Forinsecum servitium* as the Genus to these Tenures, saith, *Lib. 2. cap. 16. Nu. 7. fol. 36. a.* that it was call'd *Regale Servitium, quia spectat ad Dominum Regem, & non ad alium, & secundum quod in Conquestu fuit adinventum*. Here *Bracton* also refers the Invention to the Conquest; but the Report wayeth his Opinion as well as ours, notwithstanding his great Knowledge, and that he liv'd nearer to the Conquest by two third Parts of the time than we do.

Black
book of
the Ex-
chequer.

Well; there is yet an elder, and one that might see some that liv'd in the Conquerour's time, the Author of the *black-book* of the Chequer: who speaking of the Saxon Laws and those of the Conquerour saith, *Cap. 16. fol. 16. b. Quasdam reprobovit, quasdam autem approbans, illis transmarinas Neustrie (id est Normannie) Leges, quae ad Regni pacem tuendam efficacissime videbantur, adjecit*. What were those *Neustrian* Laws or what could they be (in all the books of the Law) for preserving Peace, save *Military Tenures*? And the Exchequer it self, where the cognizance of all these Tenures lyeth, was brought in also by the Conquerour.

But *Ingulphus* the Abbot of *Croyland*, liv'd long in the Conquerour's time, and was one of his Domesticks or Familiars, as he termeth himself. And by him it appeareth that the Conquerour nor only generally dispossest the Saxons and gave their Lands to his Normans and others, but chang'd also their manner of conveyance, the form of their Charters and the Course of making Knights, whereupon all the Rules of *Knight-service* have since depended. See his words p. 901. For at that time *Miles & per militiam tenens* were all one by *Glanvils* Testimony, *Lib. 7. cap. 3. p. 49*.

But when all fails, I hope they will believe the Conquerour himself, who in a Charter of his Laws and a great Council of the Kingdom, which we now call a Parliament, publish'd by Mr. *Lambard*, useth these words.

Statuimus & firmiter precipimus, ut omnes Comites, & Barones, & Milites, & Servientes, & universi liberi homines totius Regni nostri praedicti, habeant & teneant se semper bene in Armis, & in Equis, ut decet & oportet. Et quod sint semper prompti & parati ad Servitium suum integrum nobis explendum & peragendum, cum semper opus adfuerit, secundum quod nobis debent de Feodis & Tenementis suis de jure, facere, & sicut illis statuimus per commune Consilium totius Regni nostri praedicti, & illis dedimus & con-

cessimus in Feodis jure hereditario. Hoc præceptum non sit violatum ullo modo super Forisfacturam plenam.

Here the word *statuimus*, &c. sheweth that it was the Conqueror's institution, and *concessimus in Feodis jure hereditario*, implyeth that Feuds were not Hereditary before this grant. But there may be the same objection against it which my self made against the like in *Edw. the Confessor's Laws*, that it is in a differing Letter from the rest of the Text, and not found in the Copy left unto us by *Roger Hoveden*. I acknowledge it, but I see that here every thing agreeth with the Manners, Laws, Time, and Idiom of the Conqueror: And I conceive that it is fallen out as it did of old in the Councils of *Nice* and *Sardis*, and many other too, several Councils to be joyn'd together. For *Hoveden* mentioneth his copy to be *Decretum in Civitate Claudia*, that is *Gloster*: but *Lambard* his, to be in *Civitate Londra*, *London*: so that they seem two several Constitutions made at several Times and Places, and here put together into one. Howsoever it be, 'tis very observable; for it discovereth that which elsewhere we meet not with so perspicuously related, That the great Dignities of Earls and Barons or Ministerial Thanes, which before were arbitrable or but for Life, and those also of the lesser sort (which enjoy'd the *Knight's Fees* no otherwise than in the same manner) were either now erected with us or made hereditary, according to the Testimony of the Feodal Law before recited. Till now therefore there could no *Wardship*, *Marriage*, *Relief*, or other *Feodal Servitudes* (thereupon depending) be amongst us; nor could the word *Feodum* be taken for *Hereditas*, the one being formerly contrary to the other. For *Cujacius* and the Feudists, *Feud. Lib. 2. Tit. 17. p. 166.* make *Proprietas*, *Alodium*, & *Hereditas* to be all one in feodal Sense; and *Feodum* to be contrary to them all, as *res aliena Proprietatis*, *Servituti obnoxia*, & *Sucessionis coercita*; and being until this time not hereditary but arbitrable.

The course being thus chang'd by the Conqueror, was presently pursued here in *England* according to the *Norman* manner as appeareth in *Doomsday*, where it is said, *Habet in eodem Feudo de W. Comite Radulpho de Limes 50 Carucat. Terræ sicut fit in Normannia*. He joyneth *Normannia* with *Feudum*, as to shew us whence it came, and where we should see the pattern of it.

The old *Saxon* manner of dividing the Kingdom by Hydes, and levying Souldiers according to the Hydes grew now out of use; and instead thereof the Kings Wars to be supplied by *Knight's Fees*, the Number whereof shortly after were accompted, as *Sprott* the Monk of *Canterbury* relateth, to 60215. and of them he saith 28115. were in the Clergy's Hand. The *Normans* also chang'd the name of an Hyde of Land and call'd it *Carruc*, a *Plough Land*, and as it seemeth in erecting and laying forth their *Knight's Fees*, assign'd ordinarily two *Carrues* or *Plough Lands* to a *Knight's Fee*. For 'tis noted out of the *Black Register* of *St. Edmundsbury*, that *Will.* the Conqueror gave to *Baldwin* then Abbot there, *quingenta carrucata Terræ unde feodaret quadraginta Milites*. And according to the rate of so much Land in those times, is a *Knight's Fee* at this day valued in the *Law books* but at five pounds.

Hydes
disus'd.

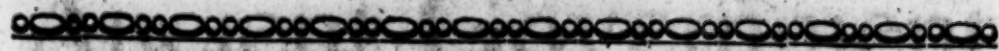
CHAP. XXVIII.

The Conclusion.

I will wander no further in this Argument; I suppose I may be bold (out of that which is already said) to conclude that I was not mistaken in referring the Original of our Feuds in England to the Norman Conquest: and that my conjecture doth not cross the force of any Law. But now I come to an end, I must discover a great Mistaking committed by him that drew the Breviate for the Reverend Judges; for he hath made us all on both sides, like *Pan* in *Ovid*, to towle a Reed-sheaf instead of *Syrinx*, or like *Ixion* to embrace a cloud instead of *Juno*, to labour much about a surmis'd Assertion of his own, instead of that which I deliver'd. The truth is, I have no where refer'd the Original of Feuds in England to the Norman Conquest. Nay, when I spake of them, I said *habentur primum, quæ apprimè huc conducunt in Anglo-Saxonum nostrorum Legibus*, and this I still affirm; but my words which he hath much perverted are these, *Feodorum Servitutes in Britanniam nostram primus invexit Gulielmus senior*. It was neither my Words nor my Meaning to say, that he first brought in either Feuds or Military Service in a general sense, but that he brought in the Servitudes and Grievances of Feuds, viz. *Wardship*, *Marriage*, and such like, which to this day were never known to other Nations that are govern'd by the *Federal Law*. There is great Difference between *Servitia Militaria* and *Servitutes Militares*: The one, Heroic, Noble and full of Glory, which might not therefore be permitted in old time to any that was not born of free Parents; no, not to a King's Son (as appeareth in *Virgil*) wherein our Saxons also were very cautelous, and accounted a Souldiers shield to be *Insigne Libertatis*: the other, not ignoble only and servile, but deriv'd even from very Bondage. Let not this offend: I will say no more.

30. Julii 1639.





ENGLAND

Two Discourses:

I. Of the ancient GOVERNMENT of *England*.

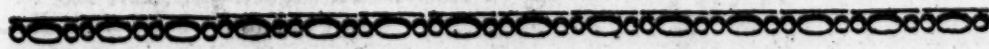
II. Of PARLIAMENTS.

By Sir *HENRY SPELMAN* Kt.

Publis'd from the Original Manuscripts.

*Sapientia, & Disciplina, & Scientia Legum apud Deum: Di-
lectio & Via bonorum apud eum.*

Wisdom and Knowledge, and Understanding of the Law are of
God: and Love and good Works come of him. Ecclus. xi. 15.



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OF THE Ancient Government

OF ENGLAND

TO tell the Government of *England* under the old *Saxon* Laws, seemeth an *Utopia* to us present; strange and uncouth: yet can there be no period assign'd, wherein either the frame of those Laws was abolished, or this of ours entertained; but as Day and Night creep insensibly, one upon the other, so also hath this Alteration grown upon us insensibly, every age altering something, and no age seeing more than what themselves are Actors in, nor thinking it to have been otherwise than as themselves discover it by the present. Like them of *China*, who never travailing out of their own Country; think the whole World to extend no further. As one therefore that has coasted a little further into former times, I will offer unto you a rude Mapp thereof; not like those of the exquisite Cosmographers of our latter ages, but like them of old, when as neither Cross Sails nor Compass, were yet known to Navigators.

Our *Saxons*, though divided into many Kingdoms, yet were they all one in effect, in Manners, Laws, and Language; so that the breaking of their Government into many Kingdoms, or the reuniting of their Kingdoms into a Monarchy, wrought little or no change amongst them touching Laws. For though we talk of the *West-Saxon Law*, the *Mercian Law*, and the *Dane Law*, whereby the west parts of *England*, the middle parts, and those of *Norfolk*, *Suffolk*, and the north, were severally governed; yet held they all an uniformity in Substance, differing rather in their *manner* than in their *Canes*, that is in the Quantity of Fines and Amercements, than in the course and frame of Justice.

Therefore, when all these Kingdoms grew into one Monarchy, as under *Alfred*, *Ethelstane*, *Edgar*, &c. this bred no notable innovation in any of them; for the King had no new Law to impose upon his new Subjects; nor were his new Subjects unacquainted with his form of Government; having always liv'd according to the same. So that when *Edward* the Confessor came to take away these small Differences that were between these three Laws, he did it even in these fickle and unconstant times without all Tumult or Contradiction; making that his alteration famous rather by the new name, than by the new matter. For abolishing the three particular names before-mentioned, he now call'd it the *Common Law of England*, for that no part of the Kingdom should henceforth be govern'd by any particular Law, but all alike by a *Common Law*. But inasmuch as this *Common Law* is but the half Arch of the Government, tending only to the temporal Part thereof, and not unto the Ecclesiastical; I cannot well present the one without the other, and must therefore make a project of the whole Arch, that so the strength and uniformity of both the parts may the better be conceived.

As therefore each side of an *Arch* descendeth alike from the Coane or top-point; so both the parts of that their Government was alike deduced from the King, each of them holding correspondency one with the other (like two loving Sisters) both in aspect, and in lineaments.

To begin with the right side or eldest Sister: the *Estate Ecclesiastical* was first divided into Provinces: Every Province into many Bishopricks: Every Bishoprick into many Arch-Deaconries: Every Arch Deaconry into divers Deanries: Every Deanry into many Parishes. And all these committed to their several Governours; Parsons, Deans, Arch-Deacons, Bishops and Arch-Bishops; who, as subordinate one to the other, did not only execute the charge of these their several Portions: but were Accountant also for the same to their Superiours.

The Parson as *ima species*, was to hear and determine the breaches of God's Peace, of Love, and Charity, within his Parish: to reprove the inordinate Life of his Parishioners, and tho' he could not strike with the Ecclesiastical Sword, yet might he shake it against them by enjoining notorious offenders to Contrition, Repentance, Satisfaction; and some time by removing them from the blessed Sacrament.

The *Dean*, to take cognisance of the Life and Conversation of the Parsons and Clergy-men of every Parish within his Deanery: to censure breach of Church-peace, and to punish incontinent and infamous livers by Excommunication, Penance, &c.

And because there could be no breach of the King's Peace; but it must also break the Peace and Unity of the Church; the Bishop's Dean, in whose Deanry the Peace was broken, had in some cases 10^s. for his part of the mulct, or fine thereof; as appeareth *Ll. Ed. Confess. cap. 31*.

The *Arch-Deacon*, drawing nearer to the Bishop, drew the more preeminence from him, and was his coadjutor in the ordination of Clerges, having a superintendent Power over all Parochial Parsons within every Deanry of his precinct.

The *Bishop*, as the greatest Orb of the Diocess had jurisdiction and coercion through the same, in all Ecclesiastical Causes, and on all Persons; except Monasteries exempted*. And for this purpose had two general Synods in the year, wherein all the Clergy of his Diocess assembled for determining matters touching the Church, as well in Faith, as in Government.

But the *Arch-Bishop* (to bind up this Golden fagot in the band of Union and Conformity)† comprehended all the Bishops of his Province *sub pallio sue Plenitudinis*, or *sub Plenitudine Potestatis*; having supreme jurisdiction to visit and reform in all their Diocesses whatsoever was defective or omitted. That by this means no transgression might break through so many wards, but if it escaped the sword of *Haxael*, *Jebu* might slay it; or if it passed them both, yet *Elisha* might light upon it.

This was the modell of the Church policy; composed no doubt out of that fundamental rule of Government prescribed by *Jethro* unto *Moses*: *Appoint rulers over thousands, over hundreds, over fifties, and over tens*. According to the steps whereof the state temporal did likewise take her lineaments.

For the temporal Government was likewise divided into *Satrapies* or *Duke-doms*, which contained in them divers *Counties*; the County divers *Lathes* or *Trithings*; every Trithing divers *Hundreds* or *Wapentakes*; every Hundred divers *Towns* or *Lordships*, shortly after called *Baronies*. And the Government of all these were committed to their several Heads; viz. *Towns* or *Manours* to the Lords thereof, whom the *Saxons* called *Theings*, after *Barons*; *Hundreds* to the Lords of the Hundreds: *Trithings* or *Lathes* to their Trithingreves; *Counties* to their Earls or Aldermen; and the larger *Satrapies* to their Dukes or chief Princes. All which had subordinate Authority one under the other; and did within the precinct of their own Territories minister Justice unto their Subjects.

* *Can. Apost. can. 38.* † *Archiepif. super 12. Episc. Greg. Aug. Bed. 50 a Duke 12. Com.*

For the *Theinge* or Lord of the Town, (whom the *Normans* called a Baron) had of old Jurisdiction over them of his own Town, (being as it were his Colony;) and as *Cornelius Tacitus* saith, did *Agricolis suis Jus dicere*. For those whom we now call Tenants, were in those ancient times but Husbandmen dwelling upon the soil of the Lord, and manuring the same, on such Conditions, as the Lord assigned; or else such as were their followers in the wars, and had therefore Portions of ground appointed unto them in respect of that Service; which portion was thereupon called a *Knights-fee*; for that a Servant in the War, whom the *Saxons* called a *Knight*, had it allotted unto him as the fee, or wages of his Service. Neither at the first had they these their fees, but at the Lord's Pleasure, or for a time limited; and therefore both these kinds of Military and Husbandmen dwelling upon the Town or Colony of the Lord, were (as in reason they ought) under the censure and will of their Lord touching the Lands they occupy'd; who therefore set them Laws and Customs, how and in what manner they should possess these their Lands; and as any controversy rose about them, the Lord assembling the rest of his followers, did by their Opinion and Assistance judge it. Out of which usage, the *Court-Barons* took their beginning, and the Lords of Towns and Manours gain'd the Privilege of holding Plea and Jurisdiction within those their Territories over their Tenants and followers; who thereupon are at this Day called *Señatōres*, in French *Suitres*, or *suivre* to follow. But the *Saxons* themselves called this Jurisdiction *Sacha* and *Soca*, signifying thereby *Causarum Actionem* and *Libertatem judicandi*; for *Sacha* signifieth *causa*, in which Sense we yet use it, as when we say *For God's sake*; and *Soca* signifieth Liberty or Privilege, as *Cyrilscene*, *Libertas Ecclesiæ*. But by this manner the Lords of Towns (as *ex Consuetudine Regni*) came to have Jurisdiction over their Tenants and followers, and to hold Plea of all things touching Land. But as touching cognizance in criminal matters, they had not otherwise to meddle therewith than by the King's Charters. For as touching the King's Peace, every Hundred was divided into many *Freeborghs* or *Tithings* consisting of ten Men, which stood all bound one for the other, and did amongst themselves punish small matters in their Court for that purpose, called the *Leet*; which was sometime granted over to the Lords of Manours, and sometimes exercised by peculiar Officers. But the greater things were also carried from thence into the *Hundred Courts*; so that both the streams of Civil Justice, and of Criminal, did there meet, and were decided by the Hundreds, &c. as by superior Judges both to the *Court Baron* and *Court Leet* also.

Edward the Confessor (*Ll. cap. 32.*) saith, that there were Justices over every ten *Freeborghs*, called Deans, or *Tienheorob*; (that is, *head of ten*) which among their Neighbours in Towns compounded matters of trespasses done in Pastures, Meadows, Corn, and other strifes rising among them. But the greater matters, saith he, were referred to superior Justices appointed over every ten of them, whom we call *Centurions*, *Centenaries*, or *Hundradors*, because they judged over an hundred *Freeborghs*.

The Lord of the Hundred therefore had Jurisdiction over all the Towns of the Hundred, as well as in criminal Matters as in Civil; and they that failed of their right in the *Court Barons*, *Tithings*, or *Leets*, might now prosecute it here before the Lord of the Hundred and his followers, called the *Suitors of the Hundred*, which were the Lords and owners of Lands within that Hundred; who were tyed to be there at every Court; which as appeareth by the Laws of *H. I. cap. 8.* was to be holden twelve times in the year, that is, once every month: ^b But especially a full appearance was required twice in the year; in Memory whereof the Suitors are at this Day called at our *Lady* and *Michaelmas* Courts, by the Steward of the Hundred.

^a *Ll. Edgar cap. 5.* ^b *Ll. H. I. cap. 9.*

These (as I said before) held Plea of trespasses done in Pastures, Meadows, Corn and such like, and of other strifes arising between Neighbour and Neighbour, and (as by and by also shall be shewed) of Criminal matters, touching the very Life of a Man.

Decrevit tunc porro Aluredus, &c. "King Alured then further decreed, that every Free-man should be settled in some Hundred and appointed to some Freeborg or Tithing, (as did also *Canutus Lb. par. 2. cap. 19.*) and that the heads of these Tithings or Freeborg (whom we now call *Capitales plegii*) should judge the smaller matters (as in *Leets, &c.*) but should reserve the greater for the Hundred Court; and those of most difficulty, to the Alderman and Sheriff in the County Court, *Lamb. voc. Centuria.*

The order of which proceedings in the Hundred Court do there also appear out of the Laws of King *Ethelred* made in a great Assembly at *Vanatunge Cap. 4. In singulis centuriis Comitatus sunt, &c.* "Let the Courts be holden in every Hundred, and let twelve Men of the elder Sort together with the Reve (of the Hundred) holding their Hands upon some holy thing, take their Oath that they shall neither condemn any Man that is Innocent, nor quit him that is guilty.

And it seemeth by the Laws of *Canutus, (par. 2. cap. 16. & 18.)* That a Man was not to be delayed above three Court-days from having his Right: for if he were, he might then resort to the County; and if he obtained it not there within four Courts then he might seek unto the King. And no doubt, but this Law opened a great gap for the carrying of matters from the Hundred and County Courts up to the King's Court.

The Jurisdiction also of this Court seemeth to be further abated by *H. I.* who, tho' he establish'd the Ancient manner of holding it; yet pulled he from it some principal Parts thereof; as after shall appear in a Writ of his, touching this and the County Court, directed to the Sheriff of *Worcester, (MS. Co. pa. inter 48. & 49.)*

The *Thrithingreve* or *Leidgreve* (whom I take to be the same called in the Salic Laws *Tunginus*; but doubt whether he or no, that in our Laws of *H. I.* is called *Thungrevius*) was an officer that had Authority over the third Part of the County, or three or more Hundreds, or Wapentakes; whose Territory was thereupon called a *Trithing*, otherwise a *Leid* or *Lath*; in which manner the County of *Kent* is yet divided: and the *Rapes* in *Suffex* seem to answer the same: And perhaps the *Ridings* also of *Yorkshire*; being now corruptly so called for *Tridings* or *Trithings*. Those things therefore, that could not be determined in the Hundred Courts either for Difficulty or miscarriage thereof; were from thence brought unto the *Trithing*: where all the principal Men of three or more hundreds being assembled, did debate and determine it: or if they could not, did then send it up unto the County Court to be there decided, as in Parliament, by the whole Body of the County.

This appeareth by the Laws of *Edward the Confessor (Cap. 34.)* where it is said, *Erant & alie Potestates super Wapentachiis, quas vocabant & pūdin-gar, &c.* that is, There were other Jurisdictions over Wapentakes (or Hundreds) which they called *Thrithings*, because they contained a third Part of the Province (or County.) And those that governed these *Thrithings*, were thereupon called *Thrithingreves*: before whom were brought all Causes that could not be determined in the *Wapentakes* or *Hundreds*.

Tho' I find no such Division of our County of *Norfolk*; yet I see the use thereof remained there, both till and after the times of the Conquest. For *William Rufus* in a controversy of the Abbot of *Ramsay's* about the Town of *Halme* in *Norfolk*, sent his Writ to *H. Chamberlyn* then *Thrithingreve*, (as it seemeth) over that Part of the County, commanding him to assemble three Hundreds and an half at a Place called *Flicham-burrough*, (which to this

this Day beareth that Name, and is the Site of the Hundred of *Frebridge*) there to determine the said Controversy: Which Writ for reviewing of the ancient Customs of the Kingdom, I will here adjoin, as it standeth in the Book of *Ramsay Abbey*, Sect. 197.

Willielmus Rex Angl. H. Camerario salutem. Fac convenire & consedere tres Hundredos & dimidium apud Flicceham-Burgh, propter Terram illam de Holm, que pertinet ad Ringstedam, & quam Abbas Ramesia reclamat ad victum & vestitum Monachorum suorum: Et si Abbas poterit ostendere ratione & testimonio Comprovincialium, quod Antecessor illius eandem Terram habuerit eo die quo pater meus fuit vivus & mortuus, tunc precipio ut illam Terram, & omnia que jussu pertinent ad Abbathiam suam, pacifice & honorifice habeat. Teste R. Bigod apud Wind.

Out of which Writ I conjecture that this *H. Camerarius*, to whom it was directed, might be *Trithingreeve* of that part of the County; the rather for that the Writ nameth him not *Viccomes*, as in the next precedent it doth another Man, viz. *Will. Rex, O. Vicecomiti salutem, &c.*

And that these three Hundreds and an half were to be Judges of the Cause, it appeareth by the Words *fac consedere*, that is, cause them to sit down together. For *Magistrorum & Judicum est sedere, Famulorum & Ministrorum stare*. Therefore it is said, *Exod. xviii. 13.* Moses sat to judge the People, and the People stood about him: whereupon *Hugo* also noteth, *Magistrorum est sedere*.

To this purpose also is the Law of *H. I. cap. 8.* *Si aliquis in Hundredis agendorum penuria * judicium, vel casu aliquo transferendum sit in duos * F. Judi-*

vel tres vel amplius Hundredos respectetur iusto fine claudendum. (Qu.) cum. But it seemeth that these Judges were sworn to do right, as well as those before mentioned in the Hundred Court. And that our course now used for taking a Jury out of many Hundreds in the County, for tryal of a Cause arising in one Hundred, took the beginning from the Tryal in the Trithing, and that thereupon the Trithing Court grew out of use.

The Alderman of the County, whom confusedly they call an *Earl*, was in parallel equal with the Bishop, and therefore both their Estimations valued alike in the Laws of *Ethelstane* at eight thousand *Thrymses*. He was a Man learned in the Laws, and had the Government of the whole Shire, and cognizance over all inferiour Courts and Persons, both in civil matters and criminal. For which purpose he held his ordinary Court by the Shreve, * once every month: and there resorted as Suitors, and bound by Duty, all the Lords of Manours, and principal Men of the County, with the rest of the Freeholders, who were not only Assistants, but Judges with him of all Matters there depending, whether entred there originally, or coming thither by Appeal or Provocation from the inferiour Courts. *LL. Edw. senioris, cap. ult.* Ic pille ðat ælc geseþra hebbe gemote, &c. * I will that every Sheriff " hold his Court about every four Weeks, and that he do Right equally to " every Man, and make an end of all Suits, under the pain before expressed.

As the Bishop had twice in the Year two general Synods, wherein all the Clergy of his Diocess of all sorts were ty'd to resort for matters concerning the Church; so also was there twice in the Year a general Assembly of all the Shire for matters concerning the Commonwealth; wherein, without exception, all kind of Estates were required to be present, *Dukes, Earls, Barons*, and so downward, of the Laity; and especially the Bishop of that Diocess among the Clergy. For in those days the Temporal Lords did often sit in Synod with the Bishops, and the Bishops in like manner in the Courts of the Temporality, and were therein (as by and by shall appear) not only necessary, but principal Judges themselves. *LL. Canuti Regis, par. 2. cap. 17.*

* LL. Edw. senior. cap. ult.

" The *Shyre-gemot* (for so the *Saxons* called this Assembly of the whole
 " Shire) shall be kept twice a Year (and oftner if need require) wherein the
 " Bishop and the Alderman of the Shire shall be present; the one to teach
 " the Laws of God, the other the Law of the Land.

This great Assembly was by the Laws of *Ethelstan* (*cap. 20.*) to be proclaimed or published a fennight before hand; and every Man tyed thereupon to be present at it, and in the mean time either to satisfy the wrong he had done to another, or to undergo the Penalty; which if he refused, all he had was presently to be seised, and himself put to find Sureties for his Appearance to answer.

But because this notable Assembly (otherwise called by the Authors of that time *Mallum* and *Placitum generale*) was the supreme Court of County-Justice, wherein all things of what sort soever were to be determined: we will take a little scope in the description thereof: Shewing first more particularly, who were bound to give their attendance here: Then, what lay in cognizance of this Court: And thirdly, in what steps they proceeded to the determination of the same. All which, because they cannot be more authentically delivered, than out of the Law it self; I will even from thence report it as it standeth in *LL. H. I. cap. 8. Sicut antiqua fuerat institutione formatum, &c.* " As it was devised by an ancient Institution, and confirmed
 " by true Report, that the general Pleas of the Counties ought to be assembled
 " in every Province of *England* at certain Places, and before certain Judges,
 " at certain Times thereto appointed; and that none should be put to further
 " trouble, unless the King's own necessity or the common good of the King-
 " dom required it: Therefore the Bishops, Earls, Sheriffs, Heretoches or
 " Marshals of Armies, Trithingreves, Leidgreves, Lieutenants, Hundredors,
 " Aldermen, Magistrates, Reves, Barons, Vavafors, Thungreves, and other
 " Lords of Land, must be all diligently attending (at these Assemblies) lest
 " that the Lewdness of Offenders, the Misdemeanor *Gravionum* (*i.e.* of She-
 " riffs) and the ordinary Corruption of Judges escaping unpunished, make a
 " miserable Spoil of the People.

" First, let the Laws of true Christianity (which we call the *Ecclesiastical*)
 " be fully executed with due satisfaction; then let the Pleas concerning the
 " King be dealt with; and lastly, those between Party and Party; and whom-
 " soever the Church-Synod shall find at variance, let them either make an
 " Accord between them in Love, or sequester them by their Sentence of Ex-
 " communication, &c. Whereby it appeareth, that Ecclesiastical Causes were
 at that time under the cognizance of this Court. But I take them to be such Ecclesiastical Causes as were grounded upon the Ecclesiastical Laws made by the Kings themselves for the Government of the Church (for many such there were almost in every King's time) and not for matters rising out of the *Roman* Canons, which haply were determinable only before the Bishop and his Ministers.

To proceed. Before they entered into any Causes (as it is commanded in the Laws of *Canutus* which we mentioned, *par. 2. cap. 17.*) the Bishop (to use the Term of our time, which from hence taketh the original) gave a solemn Charge unto the People touching Ecclesiastical matters; opening unto them the Rights and Reverence of the Church, and their Duty therein towards God and the King, according to the Word of God and Divinity. Then the Alderman in like manner related unto them the Laws of the Land, and their Duty towards God, the King, and Commonwealth, according to the Rule and Tenure thereof. Of all which, because I find a notable Precedent in a Synodal Edict made by *Carolus Calvus* Emperour and King of *France*, (*in Concil. Carissiano, An. Dom. 856.*) I will here add it, not to shew that our *Saxons* took their Form of Government from the *French*; but that both the *French* and they, as Brethren descending from one Parent, the *German*, kept the Rights and Laws of their natural Country.

Epif.

Episcopi quinque in suis Parochiis, & Missi in illorum Missaticis, Comitibusque in eorum Comitibus pariter placita teneant, quo omnes Reipub. Ministri, & Vassi Dominici, omnesque quicunque vel quorumcunque homines in iisdem Parochiis & Comitibus, sine ulla personarum acceptione & excusatione, aut dilatione convenient, &c. That is, "The Bishops in
 " their Parishes (or Diocesses) and the Justices Itinerant or Aldermen in their
 " Circuits, and the Earls in their Counties, shall hold their Pleas together:
 " whereunto all Ministers and Officers of the Commonwealth, all the King's
 " Barons, and all other whatsoever they be, or whose Tenants soever they
 " be, within the same Parishes or Counties, without any respect of Persons,
 " Excuse or Delay, shall assemble together: And the Bishop of that Parish or
 " Diocese, having briefly noted Sentences touching the matter out of the E-
 " vangelists, Apostles, and Prophets, shall read them to the People, and also
 " the Decrees Apostolick, and Canons of the Church; and in open and plain
 " Terms shall instruct them all, what manner, and how great a Sin it is to
 " violate or spoil the Church, and what and how great Penance, and what
 " mercilefs and severe Punishment it requireth; with other accustomed, ne-
 " cessary and profitable Admonishments. The Aldermen also, or Justices,
 " shall note down such Sentences of Law as they call to mind; and shall
 " publish unto them the Constitutions of Us and our Predecessors, Kings and
 " Emperours, gathered together touching this matter. And the Bishops by
 " the Authority of God and the Apostles; and the Aldermen or Justices,
 " and Earls, under the penalty of the King's Laws; shall, with all the care
 " they can, prohibit every Man of the Kingdom from making any prey or
 " spoil of the Church, &c.



PARLIAMENTS.

WHEN States are departed from their original Constitution, and that original by tract of time worn out of Memory; the succeeding Ages viewing what is past by the present, conceive the former to have been like to that they live in; and framing thereupon erroneous Propositions, do likewise make thereon erroneous Inferences and Conclusions. I would not pry too boldly into this Ark of Secrets: But having seen more Parliaments miscarry, yea suffer shipwreck, within these sixteen years past, than in many hundred heretofore, I desire for my Understanding's sake to take a view of the Beginning and Nature of Parliaments; not meddling with them of our time, (which may displease both Court and Country,) but with those of old; which now are like the Siege of Troy, matters only of Story and Discourse.

Because none shall go beyond me in this Argument, I will begin with the Foundation of Kingdoms, which of Necessity must be more ancient than Parliaments; for that a Parliament is the grand Council of the Kingdom assembled at the Commandment of the King, for Advice in matters of State. Our first labour is then, to see what this Grand-Council was originally.

It is confest on all Hands, that the King is universal Lord of his whole Territories, and that no Man possesseth any Part thereof; but deriv'd from him either mediately or immediately. This Derivation thus proceeded. The King in the beginning divided his whole territory into two Parts, one to be manured by his own Tenants and Husbandmen; then call'd *Socmen*. For the Kings of *England* us'd in those days to stock their grounds themselves, like the Kings of *Israel*; and by the Profits thereof especially, to maintain their Hospitality, their Court, and Estate; having in every Manour Officers and Servants for that purpose. This Part was *Sacrum Patrimonium* the inseparable Inheritance of the Crown, call'd in Doomsday *Terra Regis*, and in Law the *Ancient Demaine*. And because it belong'd to the husbandry of the King, all that manur'd or held any Part of this Land, were said to be *Tenants in Socage*, and might not be drawn into the Wars; of which Nature, as touching their Tenure they continue at this day.

The other Part of his whole Territory he portion'd out to military Men; which, tho' the other was the more profitable, yet this was always held for the more honourable; and therefore so divided this among his Nobles and chief Servants and followers for supportation in his Wars and Royal Estate: To some in greater Measure, to others in less, according to their Merit and Qualities. Provinces to Dukes, Counties to Earls, Castles and Signiories unto Barons; rendring unto him, not *ex Pacto vel Condicto* (for that was but *Cautela superabundans*) but of common Right and by the Law of Nations (for so I may term the Feodal-law then to be in our Western Orb) all Feodal Duties and Services due from their Donees and their Heirs, upon every Gift, Grant, and Alienation; tho' no Word were spoken of them. It appeareth by the Feodal-law (from whence all that Part of our Common-law that concern-

eth Fee and Tenures hath Original, and which our Common-law also affirm-
eth;) that there was always due.....*

* Here is
something
wanting:
tho' much
it cannot
be; be-
cause that
which
comes af-
ter, seems
to follow
very na-
turally
from
what
went
before.

Those that thus receiv'd their Territories from the King, were said to hold them *in Capite*, for that the King is *Caput Regni*, and were thereupon call'd *Capitanei Regis* and *Capitanei Regni*, otherwise *Barones Regis*, the King's men, Tenants or Vassals: who having all the Land divided amongst them, saving that which the King reserv'd to himself as *Sacrum Patrimonium*, were also call'd *Parag Regis*, and were always upon commandment about the Person of the King, to defend him and his Territories in War, and to coun-
sel and advise him in Peace: either *judicially* in matters of Law brought be-
fore the King in his Palace, which in those days was the only Place of Royal Justice; or *Politically* in the great affairs of the Kingdom. Hereupon, they were not only call'd *Prætorianum Consilium*, as belonging to the King's Pa-
lace, but *Magnum Consilium Regis*, and *Magnum Consilium Regni*. For that in those times, it belonged only to them, to counsel with the King on State-matters and matters of the Kingdom; inasmuch as no other in the King-
dom possessed any thing but under them. And therefore, as in a Feudal Government, the Agreement or Disagreement of the Master of the Family con-
cluded the mental and the whole Family; so the Agreement and Disagreement of the chief Lord or him that held *in Capite*, concluded all that depended on him or claimed under him, in any matter touching his Fee or Tenure. To this purpose, seemeth that in the Laws of Edward the Confessor, ratified by the Conquerour: *Debet etiam Rex omnia vice facere in Regno; & per judicium Procerum Regni*; who to show that he was (within) his time.

These great Lords, according to this Archetype of Government set them by the King, divided their Lands in like manner among their Tenants and followers. First, they assign'd a Portion of *Victum & Vestitum sum*, which they committed over to their *Socmen* and *Plasbandmen*, to furnish them with Corn, Victuals, and Provision for Hospitality; and briefly, all things necessary to their domestical and civil Part of Life. The residue they di-
vided into as many Shares or Portions as might well maintain so many military Men, whom then they call'd their *Knights*, and thereupon the shares them-
selves *Knights-fees*, i. e. *Stipendia Militaria*. And these Fees they granted over to each of their principal Followers, furnishing them with so many Knights for the Wars.

These *Grantees* that receiv'd their Estates from the Barons or *Capitanei* and not from the King, were call'd *Valvassores* (a Degree above Knights,) and were unto their Lords (the *Capitanei* or *Barones Regis*) as they the *Capitanei* were unto the King, and did in like manner subdivide their Lands among their *Socmen* and military Followers, who in old time were call'd *Valvassini*; whom I take to be the same at this Day that are the Lords of every Ma-
nour, if not those themselves that we call *Knights*, as owners of a *Knight's-Fee*. For in this, the Feudal-law it self is doubtful and various, as of a thing lost by Antiquity or made uncertain by the differing Manners of fe-
veral Nations. Inasmuch, that *Valvassores* and *Valvassini* grew to be con-
founded, and both of them at last to be out of use, and no other Military Tenures to be known amongst us, than *tenebre per Baroniam*, and *tenebre per Feodum Militare*. But in a Charter of Henr. I. it is said: *Si exurgat Pla-
citum de divisione Terrarum, si interest Barones meos Dominicos, tractetur in Curia mea, & si inter Valvassores duorum Dominorum, tractetur in Comi-
tatu, &c.* Where the *Valvassores* were also, and the Barons themselves Sutors and Attendants. Bracton mentioneth them in Henry III's time, to be *Viri magna dignitatis*. Nor was their memory clean gone in Richard II's

* Hott. Fran. ca. 27. p. 216. b LL. Edw. Conf. cap. 17. c De tenend. Comitatu. d LL. Hen. I. cap. 8. e Lib. i. c. 8. nu. 4.

days; as appeareth by *Chaucer*. Yet do I not find in any of our ancient Laws or Monuments, that they stood in any classick kind of Tenure, other than that we may account the *Baron*, *Vassal*, and *Knight*, to be (as our Lawyers at this day term them) the *Chief Lord*, *Meine* and *Tenant*.

But herein the Feodal-law of our Country differ'd from that of *Milan* and other Parts. For there the *Vassals* could invest (which we call *infeoffe*) none under them in Fee, that is to hold of them by *Knights-service*. And with us, every Tenant *Par avai* might in infinitum, till the Statute of *Quia Emptores Terrarum*, enfeoffe another by *Knights-service*, and to do all the Services unto him, that he did to his *Meine Lord*. So that by this means, a line of *Knights-services* might be created of a dozen, yea twenty *Mean-Lords* and *Tenants*, wherein every of them might have his *prochaine Tenant* obliged unto him in the Duties and Services that his Lord Paramount, which held of the King, was to do and yeild unto the King him self for the same Lands, viz.

Honour,	Ward,	Sustenance,
Safety,	Marriage,	Counsel to {give } Aid,
Attendance,	Relief,	{keep }
Defence of his Person,	Tribute,	Fidelity.
Defence of his Patrimony,		

All which in ancient time, while the *Feodal-law* flourished, were well understood to be comprehended under the Profession of Homage and the oath of Fidelity, which every Feodal Tenant (or, as others call him, *Vassal*) usually did unto his Lord.

Honour: promis'd by the Tenant upon his knees in doing Homage: which tho' it be the greatest and most submiss Service that a Freeman can do unto his Lord, yet the profession of it to the meanest subject is as ample and submiss; yea, in the very same words that to the King himself.

Attendance: to follow and attend him in the War at his own charge; and in Peace with suite of Court. Therefore *Tacitus* calleth them *Comites*.

Defence of his Person; for if he forsook his Lord being in Danger, it was forfeiture of Life, Land, and all he had.

Defence of his Signiory; that nothing of his Lands, Rents, or Services, were withholden or withdrawn.

Profit by *Ward*, *Marriage*, and *Relief*, as they fell.

Tribute by way of *Aid*; to make his eldest Son a Knight; to marry his eldest Daughter, ransom himself being taken prisoner; yea in some Places to be an Hostage for his Lord.

Sustenance; that being fallen into Poverty (according to that in the Canon Law spoken of a Patron) *Alatur egenus*.

Counsel and advice; in which respect the Tenant was bound ordinarily once in every three weeks to come to his Lord's Court and there as a Judge (with others of his Peers) to censure the Causes of his Signiory, and to direct his Lord, as the cause occurrent did require, and always to keep his Counsel. This to the meanest Lord was in the Nature of the King's Great Court or Counsel, call'd afterward a *Parlyment*.

Fidelity; for to all these was the Tenant by *Knights-service* ty'd by his Oath of Fealty, swearing to be *feal* and *leal*: As the Oath was at those times interpreted as well by Divines and Canonists, as by Feodists and Lawyers.

And as these were inherent to this Tenure or common Right; so were there many other grievous exactions impos'd by the Lords upon their Te-

^a Lit. Lib. 2. ca. 1. ^b Cujac. Const. Lot. Feud. pa. 284. ^c Auzery, Cujac. lib. 2. Feud. Tit. 7. pa. 133. ^d Cujac. ibid. ^e Epist. Fulberti Epist. Canon. & Can. 12. q. 5.

nants; some by Custom of the Manour; some by Composition upon granting the Fee; and many by Signioral Authority, as tho' the Lord besides his Legal Power, might do some things (like the King) by *Prerogative*.

By Custom, * when the Lord or Lady came into the Manour, the Bailiff was to present them 18 *oras denar*. and every of their Servants 10, with some Sums of Money as Gratuities, *ut essent leti animo*.

That the Tenants should pay 32^d. for every Daughter they married.

It was an ordinary Custom, that Lords might take (not only of their Tenants, but of all the Country thereabout) Victuals and all other Necessaries for furnishing their Castles; which how grievous it was, may well enough be conceiv'd, tho' the Statute that restrain'd it, did not testify it. So other Lords took Provision for their Household and Hospitality, within their Manours.

By Composition; * as to have their Tenants attend them with Horse and Man in their Journies; whom they call'd *Road-knights*. To present them yearly at times, *Horses*, *Hawks*, and other things of Profit and Pleasure.

By Signioral Authority; as to lye and feast themselves and Followers (call'd *Coshering*) at their Tenants Houses; and when any matter of extraordinary Charge fell upon them, then to extort the same amongst their Tenants; which the *Irish*, about forty Years since, of my own knowledge still continu'd, calling it *Cuttings*, according to our old Word *Tallagium*. But among us it was taken away by the *Magna Charta* of King *John*.

I speak not of the innumerable *Carriages*, *Angaries*, and *Vexations*, with which they otherwise harrowed if not plagued their Tenants. Yet must I not let that pass, which every where was then in use, for Lords of Castles to imprison Men at pleasure, to hold and keep Distresses there against common Justice, and to do many Outrages all about them. Wherein the Lords of Manours imitating them, would also imprison their Tenants and Followers; which Custom I saw also not yet laid down in *Ireland*, forty Years since. For a *Meane-Lord* would ordinarily say upon offence taken against a Churle, &c. *Take him and put him in Balles*.

But let *Matthew Paris*, who liv'd long after many of these Oppressions were abolish'd, tell you the Fashions of those Times*.

* There is
Space left
for a Quo-
tation, in
the Original;
but what
place in
Mat. Paris
he refers
to, I know
not.

Every Lord having this Authority over his Tenant, the Superiour, as comprehending them all, and holding *in Capite*, was tyed to the King to see all under his Tenure to be of good Government, good Behaviour, and forthcoming whensoever they should be demanded, to answer any Misdemeanour. This appeareth by the Laws of *Edward the Confessor*, where it is said, *Archiepiscopi, Episcopi, Comites, Barones, & omnes qui habuerint Sacam & Socam, &c. Milites & proprios Servientes, &c. Dapiferos, Pincernas, &c. sub suo Friburgo habeant*. That is, *sub sua fidejussione de se bene gerendo*.

By reason whereof, whatsoever those their Lords agreed or disagreed unto in matters of the State and Commonwealth, it did bind every of them their Inferiors. Unto whom they themselves might then also appoint Laws and Ordinances in their own Courts. And this is that which *Tacitus* affirmeth to have been the ancient manner of the *Germans* our Ancestors; *Agricolis suis jus dicere*: where under the word *Agricolis* he intendeth all them whom we call *Tenants*.

Hence then it comes to pass, that in making Laws of the Kingdom, the common People were not consulted with, but only the Barons and those which held *in Capite*, who then were call'd *Concilium Regni*. And the common People being, as I said, by way of Tenure under one or other of them, did then by him that was their chief Lord (as by their *Tribune* or *Procurator*,

* *Domesd.*, *Herf. Lene.* b *Plac. Coron. R. de Banco.* c *Bracton.*

and as now by the *Knights of the Shire* consent or dissent in Law-making, and are not therefore nam'd in the Title of any ancient Law.

Look *Doomsday-book*, and there ye shall see the whole Kingdom divided only among the Barons and great Persons; and the whole Commons of the Kingdom distributed and plac'd under some of them, tho' not by Name, yet by Number, in their several Qualities.

Let us then see how the Practice of those ancient Ages agreed with this Theorem.

King *Ina* made his Laws by the Advice of *Kenred* his Father, and (as he saith himself) *Headis & Erkenwaldi Episcoporum meorum, & omnium Aldermannorum* (i.e. Procerum) *meorum, & Seniorum sapientum Regni mei, & multa aggregatione servorum Dei*, which is of Church-men, as I take it.

Alured briefly, *Consilio Sapientum meorum*.

Edward the Elder proposeth his Laws not as *Senatus-consultum*, but as *Edictum Principis*; viz. *Ego Edouardus Rex, iis omnibus qui Reipub. præsunt, etiam atque etiam mando, ut, &c.* And after by the absolute Words, *Præcipio, Statuimus, Volo*. Yet those wherein he and *Guthrum* the Dane joined, are call'd *Senatus-consulta*.

Ethelstane made his, *Ex prudenti Ulfbelme Archiepiscopi aliorumque Episcoporum suorum consilio, necnon omnium Optimatum & Sapientum mandato suo congregatorum*.

Edmund, in a great Assembly, *Tam Ecclesiasticorum quam Laicorum, cui interfuerunt Odo & Wulfstanus Archiep. plurimique alii Episcopi*.

Edgar, *In frequenti Sapientum Senatu*.

Ethelred, *In Sapientum Concilio*.

Canutus saith, *Sapientum adhibito Consilio per omnem Angliam observari præcipio*.

As for *Edward* the Confessor, his Laws come not to us as they were composed by himself, but as the Paragraphs of them were collected by the Conqueror, and augmented afterward. In which Collection there is no mention made of the manner of their Institution; but reciting of a Passage of *St. Austin's* touching Tithes, it is spoken as of former time, that *Hæc concessa sunt a Rege, Baronibus & Populo*; meaning the several kinds of Tithes there mention'd. But whether these Words extend to a Concession of them by Parliament (as we now call it) or by a voluntary Contribution of them, yielded unto by the King, the Barons, and the People, according to the Canons of the Church, I leave to others to determine.

To come to the Times of the Conqueror, wherein *Novus seclorum nascitur ordo*; and from whence, as from a new Period, we must now take all our Projections. The great Establishment of his own and of *Edward* the Confessor's Laws, is said in the Title to be that which *Gulielmus Rex Anglorum cum Principibus suis constituit post Conquisitionem Angliæ*. Other Authors instead of *Principibus* have *Baronibus*. And tho' all his Laws for the most part were ordain'd by his Charter in his own Name only, yet they seem to be made by the Consent of the Bishops and Barons. For in his Charter whereby he divideth the Court-Christian from the Temporal, he saith thus — *Sciatis—quod Episcopales Leges—communi Concilio, & consilio Archiepiscoporum meorum & ceterorum Episcoporum & Abbatum, & omnium Principum regni mei emendandas judicavi*. And this seemeth to be that same *Commune Concilium totius Regni*, whereby he made the Laws he speaketh of in his Charter of the great Establishment aforesaid.

^a Circ. An. 700. LL. Inæ Pref. ^b Circ. 880. in Pref. ^c Circ. 910. LL. Pref. & capp. 1. 7. ^d Pref. Fed. ^e Circ. 930. in Pref. LL. & Epil. ^f Circ. 940. LL. in Pref. ^g Circ. 970. in Pref. ^h Circ. 1000. in Pref. ⁱ Circ. 1025. in Pref. LL. politic.

William Rufus in An. 1094, calls *Episcopos, Abbates, cunctosque Regni Principes* to a Council at *Rochingebam*, 5. Id. Mar.

Henry I. de communi Concilio gentis Anglorum (saith *Matthew Paris*) *posuit Dunelmensem Episcopum in vinculis*. Where *Gentis Anglorum* might be extended to such a Parliament as we use at this day, if the use of that time had born it. But *Eadmer* speaking of a Great Council holden a little after at *Lambeth*, calleth it *Concilium Magnatum utriusque Ordinis*, excluding plainly the *Commons*. And to that effect are also all the other Councils of his time.

But our later Chroniclers following *Polydore*, as it seemeth (for they cite no Author) do affirm that *Henry I.* in the sixteenth Year of his Reign, held the first Parliament of the three Estates. The truth whereof I have taken some pains to examine, but can find nothing to make it good. *Eadmerus*, who flourish'd at that very time, writing particularly of this Council or Assembly, saith, *xiii. Kal. Aprilis, factus est Conventus Episcoporum, Abbatum, & Principum totius Regni apud Serberiam, cogente eos illuc sanctione Regis Henrici I.* And among other Causes handled there, he sheweth this to be the principal, *viz.* That the King being to go into *Normandy*, and not knowing how God might dispose of him, he desir'd that the Succession might be confirm'd on his Son *William*. Whereupon (saith *Eadmer*) *omnes Principes facti sunt homines ipsius Willielmi, Fide & Sacramento confirmati*.

Florentius Wigorniensis, who liv'd at that time, and dy'd about two Years after, ^d reporteth it to the same effect. *Conventio Optimatum & Baronum totius Angliæ apud Sealesbiriam 14. Kal. Apr. facta est; qui in presentia Regis Henrici, Homagium filio suo Gulielmo fecerunt, & fidelitatem ei juraverunt*. Here is no mention of the *Commons*, whom in likelihood they should not have pretermitted, if they had been there assembled, contrary to the usual Custom of those Times.

Nor doth any succeeding ^e Author, that I can find, once touch upon it. I conceive there might a mistaking grow by *Polydore* or some other; for that many of the *Commons*, if not all, were at this time generally sworn to Prince *William*, as well as the *Barons* were; and as after in the Year 1127. to *Maud* his Daughter, Prince *William* being then dead. But I no where find in all the Councils (or *Parliaments*, if you so will call them) of this time, any mention made of any other than the Bishops, Barons, and great Persons of the Realm. And so likewise in the time of King *Stephen*.

The first Alteration that I meet with, is in the twenty second Year of *Hen. II.* where *Benedict Abbas* saith, *Circa festum S. Pauli venit Dominus Rex usque ad Northampton, & magnum ibi celebravit Concilium de Statutis regni sui, coram Episcopis, Comitibus, & Baronibus terræ suæ, & per consilium Militum & Hominum suorum*. Here *Militum & hominum suorum* extendeth beyond the *Barons*, and agreeth with the Charter of King *John*, as after shall appear. Yet *Hoveden*, speaking of this Council, doth not mention them; but only termeth it *Magnum Concilium*.

But there happen'd about this time a notable Alteration in the Commonwealth. For the great Lords and Owners of Towns, which before manur'd their Lands by Tenants at Will, began now generally to grant them Estates in fee, and thereby to make a great multitude of Free-holders more than had been: Who by reason of their several Interests, and being not so absolutely ty'd unto their Lords as in former time, began now to be a more eminent part in the Commonwealth, and more to be respected therefore in making Laws, to bind them and their Inheritance.

But the Words *Militum & Hominum suorum*, imply such as held of the King

^a Eadm. Wil. II. p. 26. ^b Lib. II. pag. 188. ^c Lib. 5. pag. 117. ^d In. An. 1116. ^e W. Newbrig. Malmesb. Rad. Nig. Sim. Dun. Rad. de Dicet. Mat. Par. Mat. West. Ran. Cestr. Tho. Walsing.

in *Capite*, not *per Baroniam*, and therefore were no Barons; yet such as by right of their Tenure ought to have some Voice, or Patron to speak for them in the Councils of the Kingdom. For holding of the King, as the Barons did, they could not be patronized under them. And doubtless they were not many at this time, tho' much increased since the making of *Doomsday-book*, where those few, that were then, are mentioned. And it may be, the Word *Hominum*, here doth signify those that serv'd for Burrough-Towns holden of the King; for it must be understood of Tenants, not of Servants.

To grope no further in this Darkness. The first certain Light that I discover for the Form of our Parliaments at this day, is, that which riseth forty Years after, in the *Magna Charta* of King John; the Words whereof I will recite at large, as they stand not only in *Matthew Paris*, but also in the *Red-book* of the Exchequer, with some little difference happening in the writing.

Et civitas Londoniensis habeat omnes antiquas Libertates & liberas Consuetudines suas, tam per terras quam per aquas.

Preterea, volumus & concedimus, quod omnes alie Civitates & Burgi, & Villa, & Barones de quinque Portibus, & omnes Portus, habeant omnes Libertates, & omnes liberas Consuetudines suas. Et ad habendum commune Consilium Regni de Auxiliis assidendis (aliter quam in tribus casibus predictis) & de Scutagiis assidendis; summoneri faciemus Archiepiscopos, Episcopos, Abbates, Comites, & majores Barones regni sigillatim per Literas nostras. Et preterea faciemus summoneri in generali per Vice-Comites & Ballivos nostros, omnes alios qui in Capite tenent de nobis, ad certum Diem, scilicet ad terminum 40 Dierum ad minus, & ad certum Locum; & in omnibus Literis Summonitionis illius, causam Summonitionis illius exponemus. Et sic facta Summonitione, negotium procedat ad diem assignatum, secundum Consilium eorum qui presentes fuerint, quamvis non omnes summoniti venerint.

Here is laid forth the Members, the Matter, and the Manner of summoning of a Common Council of the Kingdom; which as it seemeth was not yet in the Records of State call'd a Parliament.

The Members are of three sorts. First the Archbishops, Bishops, Abbots, Earls, and the Greater Barons of the Kingdom, so call'd to distinguish them from the Lesser Barons, which were the Lords of Manours. Secondly, Those (here before mention'd by *Bened. Abbas* to be call'd to *Clarendon*) that held of the King in *Capite*, whom I take to be now the Knights of the Shire. And thirdly, those of Cities, Burroughs, and Towns, call'd *Burgeses*, and the Barons of the *Cinque ports*.

The first sort are to appear personally, or by particular Proxies; for the Words as touching them are, *Summoneri faciemus sigillatim*: but as touching the others, it is *Summoneri faciemus generaliter*, &c. Not that all should come confusedly, but that they should send their Advocates, which commonly are but two, to speak for them. These the French in their Parliaments call *Ambasadores*, and *Syndicos*.

In the first Rank, the Earls and greater Barons have their place in this Council; for that they hold of the King in *Capite* by a Barony. And the Bishops and Abbots with them of the second Rank: so likewise, for that it was declared and ordain'd in the Council of *Clarendon*, that they should have their Possessions of the King as a Barony, and should be Suiters, and sit in the King's Court in Judgments, as other Barons; till it came to the diminution of Members, or matter of Death. But this Council of *Clarendon* did rather affirm than give them their Privilege. For the Prelates of the Church

* Viz. Ad redimendum personam Regis, ad Filium primogenitum Militem faciendum, & ad Filiam primogenitam semel maritandam. b Hottom. Francog. cap. 27.

were in all Ages the prime part of these great Councils. In the third Rank, the *Burgeses* and *Barons of the Cinque-ports* have their place; not so much in respect of Tenure (for they were not conceived to be owners of Lands) but for that in Taxes and Tallages touching their goods and matter of Trade, they might have some to speak for them, as well as other Members of the Kingdom.

But here then ariseth a question, how it cometh to pass, that every poor Burrough of *England*, how little soever it be, (two excepted) have two to speak for them in this great Council, when the greatest Counties have no more.

It seemeth that those of the Counties whom we call *Knights*, served not in ancient time for all the Free-holders of the County, as at this day they do, but were only chosen in the behalf of them that held of the King *in Capite*, and were not *Barones Majores* Barons of the Realm. For all Freeholders besides them had their Lord Paramount (which held *in Capite* to speak for them) as I have shewed before; and these only had no body, for that themselves held immediately of the King. Therefore King *John* by his Charter did agree to summon *them* only and no other Freeholders; howbeit those other Freeholders, because they could not always be certainly distinguish'd from them that held *in Capite*, (which increased daily) grew by little and little to have voices in election of the *Knights of the Shire*, and at last to be confirm'd therein by the Stat. 7. *Henr. IV.* and 8. *Henr. VI.* But to come to our question, why there are but two *Knights* for a County? It may well seem to be, for that in those times of old there were very few besides the Barons that held *in Capite*, as appeareth by that we have already spoken; and that two therefore might seem sufficient for these few, as well as two for the greatest Burroughs or Cities of *England*, except *London*. And it may be, that of the four which serve for *London*, two of them be for it as it is a City; and two others as it is a County; tho' elswhere it be not so.

But when two came first to be chosen or appointed for the rest of the Burrough or County, I cannot find. It seemeth by those Synods that were holden in the times of the Saxon Kings, and by some after the Conquest, that great numbers of the common People flowed thither. For it is said in *An. 1021. Cum quamplurimis gregariis Militibus, ac cum Populi multitudine copiosa*: And *An. 1126. Innumeraque Cleri & Populi multitudine*: and so likewise in *An. 1138.* and other Synods and Councils.

By what Order or Limitation, this innumera *Populi multitudo* came to these Assemblies, it appeareth not. *Bartol* that famous Civilian, and *Hotoman* according with him, thus expoundeth it in other Places. *Nota: quod Praesides Provinciarum coadunant universale Parlamentum Provinciae: quod intellige, non quod omnes de Provincia debent adilludire, sed de omnibus Civitatibus deputantur Ambasiatores, qui Civitatem representant.* And *Johan. de Platea* likewise saith: *Ubi super aliquo providendum est, pro utilitate totius Provinciae, debet congregari generale Concilium seu Parlamentum: non quod omnes de Provincia vadant, sed de qualibet Civitate aliqui Ambasiatores vel Syndici, qui totam Civitatem representent. In quo Concilio seu Parlamento petitur proponi sanum, ac utile Consilium.*

But our *Burgeses*, as it seemeth, in time of old were not call'd to consult of State matters; being unproper to their Education, otherwise than in matter of *Aide* and *Subsidy*. For King *John* granteth no more unto them, than *ad habendum commune Consilium Regni de Auxiliis assidendis*; if his Charter be so pointed that this clause belong to that of the Liberties granted to them: which is very doubtful, and seemeth rather to belong to that which

^a *Coke Report. in Epist.* ^b *Ad l. 2. Cod. de Legat. l. 10.* ^c *Francogal. ca. 27. p. 15.* ^d *Ad sand. L. followeth;*

followeth; otherwise, there are no Words at all for calling them unto the great Councils, or *Parlements* (if you so will term them) of that time.

And yet further, it is to be noted, that this whole branch of his Charter, touching the manner of his summoning a great Council, was not comprised in the Articles (between him and his Barons) whereupon the Charter was grounded; but gain'd from him, as it seemeth afterward. And that may be a Reason why it is left out in the *Magna Charta* of *Henry III.* confirm'd after by *Edward I.* in such manner as now we have it. The Charter of these Articles, I have seen under his own Seal.

After the death of *King John*, I find many of these great Councils holden; and to be often named by the Authors of that time *Colloquia*, after the French Word *Parlement*; but no mention in any of them of *Burgesses*; saving that in *An. Dom. 1225. Regis 10.* it is said, that the King held his Christmas at *Westminster*, *Præsentibus clero & populo, cum Magnatibus Regionis*: and that the solemnity being ended, *Hugh de Burgo* the Kings Justice propounded to the Arch-Bishop, Bishops, Earls, Barons, & *aliis universis*, the Losses the King had received in *France*, requiring of them one fifteenth.

And in the year 1229. the King summoneth to *Westminster* *Archiepiscopos, Episcopos, Abbates, Priores, Templarios, Hospitalarios, Comites, Barones, Ecclesiarum Rectores, & qui de se tenebant in Capite*; about the granting a tenth to the Pope: wherein those that held *in Capite* are call'd (as in *Henr. II.*) to the Council of *Clarendon*, and as the Charter of *King John* purporteth; but no mention is here made of *Burgesses*.



[illegible]

THE
ORIGINAL
OF THE
FOUR TERMS
Of the YEAR.

By Sir *HENRY SPELMAN* Kt.

Printed in the Year 1684. from a very uncorrect and
imperfect Copy:

*Now, Publish'd from the Original Manuscript in
the BODLEIAN Library.*

Sir *William Dugdale* in his *Origines Juridiciales*, chap. 32. pag. 89.
concerning this Treatise.

*I shall here briefly exhibit some Particulars, which I acknowledge
to have gather'd from an ample and most judicious Discourse
on this Subject written by the Learned Sir Henry Spelman Kt.
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Sir William Douglas in his Original Manuscript, Chap. 1. p. 177.
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to have gathered from an original and well preserved MS. of
on this subject written by the Learned Sir Henry Spelman in
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THE ORIGINAL

THE

OCCASION of this DISCOURSE.

About forty two Years since, divers Gentlemen in London, studious of Antiquities, fram'd themselves into a College or Society of Antiquaries, appointing to meet every Friday weekly in the Term, at a Place agreed of, and for Learning sake to confer upon some Questions in that Faculty, and to sup together. The Place, after a Meeting or two, became certain at Darby-house, where the Herald's Office is kept: and two Questions were propounded at every Meeting, to be handled at the next that followed; so that every Man had a Sennight's respite to advise upon them, and then to deliver his Opinion. That which seem'd most material, was by one of the Company (chosen for the purpose) to be enter'd in a Book; that so it might remain unto Posterity. The Society increased daily; many Persons of great Worth, as well noble as other Learned, joining themselves unto it.

Thus it continu'd divers Years; but as all good Uses commonly decline; so many of the chief Supporters hereof either dying or withdrawing themselves from London into the Country; this among the rest grew for ~~twenty~~ Years to be discontinu'd. But it then came again into the mind of divers principal Gentlemen to revive it; and for that purpose, upon the — Day of — in the Year 1614. there met at the same Place Sir James Ley Knight, then Attorney of the Court of Wards, since Earl of Marleborough and Lord Treasurer of England; Sir Robert Cotton Knight and Baronet; Sir John Davies his Majesty's Attorney for Ireland; Sir Richard St. George Knt. then Norrey, Mr. Hackwell the Queen's Solicitor, Mr. Camden then Clarencieux, my self, and some others. Of these the Lord Treasurer, Sir Robert Cotton, Mr. Camden, and my self, had been of the original Foundation; and to my knowledge were all then living of that sort, saving Sir John Doderidge Knight, Justice of the King's Bench.

We held it sufficient for that time to revive the Meeting, and only concern'd some Rules of Government and Limitation to be observ'd amongst us; whereof this was one, That for avoiding ~~Offence~~, we should neither meddle with Matters of State, nor of Religion. And agreeing of two Questions for the next Meeting,

we

we chose Mr. Hackwell to be our Register, and the Convocator of our Assemblies for the present; and supping together, so departed.

One of the Questions was, touching the Original of the Terms; about which, as being obscure and generally mistaken, I bestow'd some extraordinary pains; that coming short of others in Understanding, I might equal them if I could in Diligence.

But before our next Meeting, we had notice that his Majesty took a little Mislike of our Society; not being inform'd, that we had resolv'd to decline all Matters of State. Yet hereupon we forbore to meet again, and so all our Labours lost: But mine lying by me, and having been often desir'd of me by some of my Friends, I thought good upon a Review and Augmentation to let it creep abroad in the Form you see it, wishing it might be rectify'd by some better Judgment.



SECT.

SECT. I.

Of the Terms in general.



Our Law books have nothing, to my knowledge, touching the original of the *Terms*, so were it much better if our Chronicles had as *little*: For tho' it be little they have in that kind, yet is that little very untrue, affirming that *William* the Conquerour did first institute them. It is not worth the examining who was *Author* of the Error, but it seemeth *Polydore Virgil* (an Alien in our Commonwealth and not well endenized in our Antiquities) spread it first in Print. I purpose not to take it upon any Man's word: but searching for the fountain, will, if I can, deduce them from thence, beginning with their definition.

The Terms be certain Portions of the Year, in which only the King's Justices hold plea in the high Temporal Courts of Causes belonging to their Jurisdiction, in the Places thereto assign'd, according to the ancient Rites and Customs of the Kingdom.

The Definition divides itself, and offers these Parts to be consider'd.

- I. The *Names* they bear.
- II. The *Original* they come from.
- III. The *Time* they continue.
- IV. The *Persons* they are held by.
- V. The *Causes* they deal with.
- VI. The *Place* they are kept in.
- VII. The *Rites* they are performed with.

The Parts minister matter for a Book at *large*, but my purpose upon the Occasion impos'd, being to deal only with the *Institution* of the *Terms*, I will travel no farther than the *three* first stages of my Division, (that is) touching their *Name*, their *Original*, and their *Time* of continuance.

SECT. II.

Of the Names of the Terms.

THE word *Terminus* is of the Greek *τέρας*, which signifieth the *Bound*, *End* or *Limit* of a thing; here particularly of the *time* for Law matters. In the Civil Law it also signifieth a day set to the Defendant, and in that sense doth *Bracton*, *Glanvil*, and others sometimes use it. *Matt. Paris* calleth the Sheriff's Turn, *Terminum Vicecomitis*, and in the addition to the MSS. Laws of King *Ina*, *Terminus* is apply'd to the Hundred-Court; as also in a Charter of *Hen. I.* prescribing the time of holding the Court. And we ordinarily use it for any set portion of Time, as of Life, Years, Lease, &c.

^a *Deinde constituit* (Gulielmus Conquestor) ut quatuor quinquannis, &c. Lib. 1. p. 154. l. 16. &c.
^b Lib. 10. cap. 1. & 21. Lib. 3. Tract. 2. cap. 28. num. 1.

The space between the Terms, is named *Vacation*, à *Vacando*, as being leasure from Law business; by Latinists *Iusitium*, à *jure stando*, because the Law is now at a stop or stand.

The Civilians and Canonists call Term-time, *Dies Juridicos* Law-days; the Vacation, *Dies FERIALES*, days of leasure or intermission, Festival-days, as being indeed sequester'd from troublesome affairs of human Business, and devoted properly to the Service of God, and his Church: According to this, our Saxon and Norman Ancestors divided the Year also between God and the King, calling those days and Parts that were assigned to God, *Dies pacis Ecclesie*, the residue allotted to the King, *Dies* or *Tempus pacis Regis*.

Divisum Imperium cum Jove Caesar habet.

Other Names I find none anciently among us, nor the Word *Terminus* to be frequent till the Age of Henry II. wherein *Gervasius Tilburiensis*, and *Ranulphus de Glanvilla* (if those Books be theirs) do continually use it for *Dies pacis Regis*.

The ancient Romans, in like manner, divided their Year between their Gods and their Common-wealth; naming their Law-days or Term-time, *Fastos*, because their Prætor or Judge might then *Fari*, that is speak freely; their Vacation, or Days of Intermission (as appointed to the Service of their Gods) they called *Nefastos*, for that the Prætor might *ne fari*, not speak in them judicially. *Ovid* (*Fastorum lib. 1.*) thus expresseth it:

*Ille Nefastus erat, per quem tria verba silentur:
Fastus erat per quem Lege licebat agi.*

When that the three Judicial words
The Prætor might not use,
It was *Nefastus*: *Fastus* then,
When each Man freely sues.

The three Judicial words were *Do*, *Dico*, *Abdico*, by the first he gave licence to cite *Partem ream*, the Defendant; by the second he pronounced Sentence; and by the third he granted Execution. This à *latere*.

The Word *Term* hath also other considerations; sometimes it is used for the whole space, from the first Return to the end of the Term, including the day of Return, *Essoigne*, *Exception*, &c. Sometimes and most commonly excluding these from the first sitting of the Judges in full Court, (which is the first day for Appearance) and this is called *full Term* by the Statute of 32. of Hen. VIII. cap. 21. as tho' the Part precedent were but *Semi-Term*, *Puisne-Term*, or *Introitus Termini*. The words of the Statute are these, *That Trinity-Term shall begin the Munday next after Trinity-Sunday, for keeping the Essoignes, Proffers, Returns, and other Ceremonies heretofore used, &c. And that the full Term of the said Trinity-Term shall yearly for ever begin the Friday next after Corpus Christi Day.* Here the particulars I speak of are apparently set forth, and the Term declared to begin at the first Return. By which Reason it falleth out that the eight Days wherein the Court of the Exchequer openeth at the beginning of *Michaelmas-Term*, *Hilary-Term* and *Easter*, are to be accounted as *Parts* of those Terms, for that they fall within the first Return: the Exchequer having one Return in every of them, more than the Courts of Common Law have, viz. *Crastino Sancti Michaelis*, *Octabis Hilarii*, and *Octabis* or *Clausum Pasche*: And it seemeth that *Trinity-Term* had *Crastino Trinitatis* in the self same manner, before this Statute alter'd it.

SECT. III.

Of the Original of Terms or Law-days.

LAW-days or *Dies Juridici*, which we call *Terms*, are upon the matter, as ancient as *Offences* and *Controversies*: God himself held a kind of *Term* in Paradise, when judicially he tryed and condemned *Adam*, *Eve*, and the *Serpent*. In all Nations, as soon as Government was settled, some time was appointed for punishing *Offences*, redressing of wrongs, and determining of *Controversies*; and this time to every of those Nations was their *Term*. The *Original* therefore of the *Terms* or Law-days, and the time appointed to them, are like the Signs of Oblique Ascension in Astronomy, that rise together. I shall not need to speak any more particularly of this point, but shew it, as it farther offereth it self in our passage, when we treat of the time appointed to *Term* or Law-days, which is the next and longest Part of this our Discourse.

SECT. IV.

Of the Times assigned to Law-matters, called the Terms.

WE are now come to the great Arm of our Division, which spreads it self into many branches, in handling whereof we shall fall, either necessarily or accidentally, upon these points, viz.

1. Of Law-days among the Ancients, *Jews*, *Greeks*, &c.
2. Of those among the *Romans* using choice days.
3. Of those among the Primitive *Christians* using all alike.
4. How *Sunday* came to be exempted.
5. How other *Festivals*, and other *Vacation* Days.
6. That our *Terms* took their *Original* from the *Canon-Law*.
7. The Constitutions of our *Saxon* Kings; *Edward the Elder*, *Guthrun the Dane*, and the Synod of *Eanham* under *Ethelred*, touching this matter.
8. The Constitutions of *Canutus* more particular.
9. The Constitutions of *Edward the Confessor* more material.
10. The Constitution of *William the Conqueror*: and of Law-days in *Normandy*.
11. What done by *William Rufus*, *Henry I.* *Stephen* and *Henry II.*
12. Of *Hilary-Term* according to those ancient Laws.
13. Of *Easter-Term* in like manner.
14. Of *Trinity-Term* and the long Vacation following; how it differeth from the other Vacations.
15. Of *Michaelmas-Term*.
16. Of the latter Constitutions of the *Terms* by the Statutes of the 51. of *Hen. III.* and 36. of *Edw. III.*
17. How *Trinity-Term* was alter'd by the 32. of *Hen. VIII.*

CHAP. I.

Of the Law-days among the Ancients.

THE time allotted to Law-business seemeth to have been that from the beginning amongst all, or most Nations, which was not particularly dedicated (as we said before) to the Service of God or some Rites of Religion (for none that I read of, ordain'd them to be us'd confusedly.) Therefore whilst Moses was yet under the Law of Nature, and before the positive Law was given, he sacrificed and kept the holy Festival with Jethro his father-in-law on the one Day, but judg'd not the People till the Day after. Some particular Instance (I know) may be given to the contrary, as I after shall mention, but this seemeth then the general use.

Jews.
Exod.
xviii. 13.

Greeks. The Greeks, who (as Josephus in his Book against Apion witnesseth) had much of their ancient Rites from the Hebrews, held two of their Prytanean-days in every Month for civil matters, and the third onely for their Sacra.

Æschines in his Oration against Ctesiphon, chargeth Demosthenes with writing a Decree in the Senate, that the Prytanean Magistrates might hold an Assembly upon the eight Day of the approaching Month of Elaphebolion, when the holy Rites of Æsculapius were to be solemnized.

Romans.

The Romans likewise (whether by instinct of Nature or precedent) meddled not with Law Causes during the times appointed to the worship of their Gods, as appeareth by the primitive Law of the twelve Tables, *Feris iurgia amovento*, and by the Places before cited, as also this of the same Author,

Post semel extra Deo data sunt, licet omnia fari,

Verbaque honoratus libera Prætor habet.

When Sacrifices and holy Rites were done,

The Reverend Prætor then his Courts begun.

And Martial to the same purpose,

Sacra domus Festis, fora judicialia ponunt.

To be short, it was so common a thing in those Days of old, to exempt the times of exercise of Religion from all wordly Business, that the Barbarous Nations, even our Angli, whilst they were yet in Germany, the Suevians themselves, and others in those Northern Parts would in no wise violate or interrupt it. Tacitus says of them, that during this time of holy Rites, *Non Bellum incunt, non Arma sumunt, clausum omne ferrum; Pax & Quies tunc tantum nota, tunc tantum amata*. Of our German Ancestors we shall speak more anon; our old British are little to the purpose: they judg'd all Controversies by their Priests the Druides, and to that end met but once a Year, as Caesar sheweth us by those of the Gauls.

The latter Britains (whom we now call the Welsh) in the Saxons time about the Year 900. had two Terms only for causes of Inheritance; the one beginning at the ninth of November till the ninth of February; the other from the ninth of May till the ninth of August. The rest of the Year was counted time of Vacation, for sowing in the Spring and Reaping in the Harvest.

* Every Month had about six more or less of them, so called because on them the Prytanean Magistrates might hold Court. † So called from the Πρυτανεύειν, where their Business was to sit only on things inanimate, as when a piece of Stone, Timber or Iron, &c. fell on a Man, if the Party that sung it were not known, Sentence was pass'd on that thing which slew him, and the Masters of this Court were to see that thing cast out of the Territory of Athens. See the Attick Antiq. l. 3. ch. 3. §. 4. ‡ The Month February, or, as others would have it March, when Sacrifices were most usually offer'd to the Goddess Diana; Ἐλαφεβόλιον ab Ἐλαφεβόλος, cognomen Dianæ, quod est, jaculis cervos figens. § De bello Gallico lib. 6. ¶ Hist. Camb. p. 54.

CHAP. II.

Of Law-days among the Romans using choice Days.

I Will therefore seek the Original of our Terms only from the Romans, as all other Nations that have been subject to their Civil and Ecclesiastical Monarchy do, and must.

The ancient Romans, whilst they were yet Heathens, did not, as we at this day, use certain continued Portions of the Year for a legal Decision of Controversies; but out of a superstitious Conceit, that some Days were ominous, and more unlucky than others (according to that of the Egyptians,) they made one Day to be *Fastus* or *Term Day*, and another (as an Egyptian Day) to be *Vacation* or *Nefastus*: Seldom two *Fasti* or Law-days together; yea they sometimes divided one and the same Day in this manner:

Qui modò Fastus erat, mane Nefastus erat.

The Afternoon was Term, the Morning Holy-day.

Nor were all their *Fasti* applied to Judicature, but some of them to other Meetings and Consultations of the Commonwealth; so that being divided into three sorts, which they called *Fastos propriè*, *Fastos Endotercios*, & *Fastos Comitiales*, containing together 184 Days, through all the Months of the Year, there remained not properly to the Prætor, as *Judicial* or *Trivernal Days*, above 28. Whereas, we have in our Terms above 96 Days in Court, besides the Sundays and exempted Festivals falling in the Terms; which are twenty, or thereabout. Yet Sir *Thomas Smith* counts it marvellous, that three Tribunals in one City in less than the third part of the Year, should rectify the Wrongs of so large and populous a Nation as this of England. But let us return where we left off.

* De Rep. Angl. Lib. 3.

CHAP. III.

Of Law-days among the first Christians, using all times alike.

TO beat down the Roman Superstition touching Observation of Days, against which St. *Augustine* and others wrote vehemently; the Christians at first used all Days alike for hearing of Causes, not sparing (as it seemeth) the Sunday it self, thereby falling into another Extremity. Yet had they some Precedent for it from *Moses* and the Jews: For *Philo Judæus* in the Life of *Moses* reporteth, that the Cause of him that gather'd Sticks on the Sabbath-day, was by a solemn Council of the Princes, Priests, and the whole Multitude, examined and consulted of on the Sabbath-day. And the *Talmudists*, who were best acquainted with the Jewish Customs, as also *Galatinus* the Hebrew do report, that their Judges in the Council called *Sanhedrim*, sate on the week-day from Morning to Night, in the Gates of the City; and on the Sabbath-day and solemn Festivals, in the Walls. So the whole Year then seemed a continual Term, no Day exempt. And they that seek the Original of our modern Laws among them, do but spend their Time in vain; unless for some things impos'd on them by the Roman Emperours, when they became Subjects. How this stood with the Levitical Law, or rather the Moral, I leave to others.

Lib. 3.

CHAP. IV.

How Sunday came to be exempted.

BUT for Reformation of the Abuse among Christians, in perverting the Lord's Day to the hearing of clamorous Litigants, it was ordained in the Year of our Redemption 517. by the Fathers assembled in *Concilio Taronensi*, cap. 4. after that, in *Concilio Spalensi*, cap. 2. and by Adrian Bishop of Rome, in the *Decretal*, caus. 15. quest. 4. That *Nullus Episcopus vel infra positus Die Dominico causas judicare* [al. ventilare] *presumat*. No Bishop or inferior Person presume to judge or try Causes on the Lord's Day. For it appeareth by *Epiphanius*, that in his time (as also many hundred Years after) Bishops and Clergy-men did hear and determine Causes, lest Christians, against the Rule of the Apostle, should go to Law under Heathens and Infidels. And it is said in the first Epistle of *Clement* (if it were truly his) that St. Peter himself did so appoint it. *Concil. Tom. 1. p. 33.*

This Canon of the Church for exempting Sunday, was by *Theodosius* fortified with an Imperial Constitution, whilst we Britains were yet under the Roman Government, *Solis die, quem dominicum rectè dixere majores, omnium omnino litium & negotiorum quiescat intentio*. Thus was Sunday redeemed from being a part of the Term; but all other Days by express Words of the Canon were left to be *Dies Juridici*, whether they were mean or great Festivals. For it thus followeth in the same place of the *Decretals*: *Ceteris verò diebus, convenientibus personis, illa que justa sunt, habent licentiam judicandi, excepto Criminali*, (or as another Edition reads it) *exceptis criminalibus negotiis*. The whole Canon is *verbatim* also decreed in the *Capitulars* of the Emperours *Carolus & Ludovicus*.

CHAP. V.

How other Festival and Vacation Days were exempted.

NOW let us see how other Festivals and Parts of the Year were taken from the Courts of Justice. The first Canon of note that I meet with to this purpose, is that in *Concilio Triburiensi*, ca. 26. in or about the Year 895. *Nullus Comes, nullusque omnino secularis diebus Dominicis vel Sanctorum in Festis, seu Quadragesima, aut jejuniis, Placitum habere, sed nec Populum illo presumat cohercere*.

After this, the Council of *Meldis*, cap. 77. took Easter Week, commonly called the *Octaves*, from Law Business: *Pascha hebdomade feriandum, forensia negotia prohibentur*. By this Example came the *Octaves* of *Pentecost*, *St. Michael*, the *Epiphany*, &c. to be exempted, and principal Feasts to be honoured with *Octaves*.

The next memorable Council to that of *Tribury* was the Council of *Erford* in Germany in the Year 932. which tho' it were then but *Provincial*, yet being after taken by *Gratian* into the Body of the Canon Law, it be-

^a Capit. Car. & Lud. Can. 245. ^b L. Solis 13. Cod. Theod. de Exalt. ^c Caus. 15. quest. 4. G. 1.
^d Lib. 6. Cap. 245. à Benedic. Levita. ^e Bin. Tom. 3. Pars. 1. p. 616.

came General, and was imposed upon the whole Church. I will recite it at large, as it standeth in *Binius*; for I take it to be one of the Foundation-stones to our Terms. *Placita secularia Dominicis vel aliis Festis Diebus, seu etiam in quibus legitima jejunia celebrantur secundum Canonicam Institutionem, minime fieri volumus. Insuper quoque Gloriosissimus Rex [Francorum Henricus] ad augmentum Christiane Religionis (or as ^b Gratian hath it) [Sancta Synodus] decrevit ut nulla Judiciaria Potestas licentiam habeat Christianos sua autoritate ad Placitum bannire septem diebus ante Natalem Domini, & a Quinquagesima usque ad Octavas Pasche, & septem diebus ante Nativitatem Sancti Johannis Baptiste, quatenus adeundi Ecclesiam orationibusque vacandi liberius habeatur facultas.* But the Council of St. Medard extant first in *Burchard*, and then in *Gratian*, enlargeth these Vacations in this manner: *Decrevit sancta Synodus, ut a Quadragesima usque ad Octavam Pasche, & ab Adventu Domini usque ad Octavam Epiphaniæ, necnon in jejuniis quatuor temporum, & in Litanis majoribus, & in Diebus Dominicis, & in Diebus Rogationum (nisi de Concordia & Pacificatione) nullus supra sacra Evangelia jurare præsumat.* The Word [*jurare*] here implyeth that they should not try *Law Causes*, or hold Plea on these Days, as by the same Phrase in other Laws shall by and by appear: which the *Gloss* also upon this Canon maketh manifest, saying, *In his etiam diebus causæ exerceri non debent*, citing the other Canon here next before cited; but adding withal, that the Court and Custom of Rome it self doth not keep Vacation from *Septuagesima*, nor, as it seemeth, in some other of the Days. And this Precedent we follow, when *Septuagesima* and *Sexagesima* fall in the compass of *Hilary Term*.

CHAP. VI.

That our Terms took their Original from the Canon-Law.

THUS we leave the *Canon Law*, and come home to our own Country, which out of these, and such other foreign Constitutions (for many more there are) have framed our *Terms*; not by choosing any set Portion of the Year for them (as *Polydore Virgil*, and our Chroniclers ignorantly suggest) but by taking up such Times for that purpose, as the Church and common Necessity (for collecting the Fruits of the Earth) left undisposed of, as in that which followeth plainly shall appear.

CHAP. VII.

The Constitution of our Saxon Kings in this matter.

IN A, one of our ancient Saxon Kings, made a very strict Law against working on Sunday.

And *Alured* instituted many Festivals; but the first that prohibited Judicial Proceedings upon such Days, was *Edward the Elder* and *Guthrum* the

Of Edw.
the Elder
and Gu-
thrum.

^a Concil. Tom. 3. p. 1056. ^b Can. 15. quæst. 4. ^c Al. Septuagesima. ^d Lib. 12. c. 20. ^e Can. 22. q. 5. ca. 17. ^f Can. 15. q. 4. ca. 1. ^g Eriþ þeop mon pypce on Sunnan dæg. be his hlafordes hære. 7y he ppeo. If a Servant work on Sunday by his Master's Command, let him be made free, &c. ^h Legum cap. 39.

Legum
cap. 4.

Dane,

Dane, who in the League between them, made about ten Years before the Council of Erpford (that it may appear we took not *all* our light from thence) did thus ordain :

Opðel 7 þar 7 ymbon tocyðon 7 neal7 dagum. 7 niht 7 ærten dagum. &c.

We forbid that Ordeal and Oaths (So they called Law-tryals at that time.) be used upon Festival and lawful Fasting Days, &c.

How far this Law extended, appeareth not *particularly*; no doubt to all Festival and Fasting Days then imposed by the *Roman Church*, and such other *Provincial*, as by our Kings and Clergy were here instituted. Those which by *Alured* were appointed to be Festivals, are now by this Law made also Days of Vacation from Judicial Tryals; yet seem they for the most part, to be but *Semi-Festivals*, as appointed only to *Free-men*, not to *Bond-men*; for so his Law declareth, viz. *The twelve Days of Christmase, the Day wherein Christ overcame the Devil, the Anniversary of St. Gregory, the seven Days afore Easter, and the seven Days after, the Day of St. Peter and St. Paul, and the whole Week before St. Mary in Harveſt, and the Feast-day of All-Saints. But the four Wednesdays in the four Ember Weeks are remitted to Bond-men, to bestow their Work in them as they thought good.*

The Synod
of Ean-
ham.

To come to that which is more perspicuous; I find about sixty Years after, a Canon in our *Synod of Eanham*, under King *Ethelred*, in these words: First, touching Sunday, *“Dominica Solempnia Diei cum summo honore magnopere celebranda sunt, nec quicquam in eadem operis agatur servilis. Negotia quoque secularia quæstionesque publicæ in eadem deponantur die.* Then commanding the Feast-days of the B. Virgin, and of all the Apostles, the Fast of the *Ember Days*, and of the *Friday* in every Week, to be duly kept; it proceedeth thus: *“Judicium quippe, quod Anglicè Ordeal dicitur, & jura-menta vulgaria, festivis temporibus & legitimis jejuniis; sed & ab Adventu Domini usque post Octabas Epiphaniæ, & à Septuagesima usque 15 Dies post Pascha minime exerceantur: sed sit his temporibus summa pax & concordia inter Christianos, sicut fieri oportet.* It is like there were some former Constitutions of our Church to this purpose; but either mine *Eye* hath not light upon them, or my *Memory* hath deceived me of them.

CHAP. VIII.

The Constitution of Canutus, more particular.

Canutus succeeding shortly by his *Danish* Sword in our *English* Kingdom, not only retained but revived this former Constitution, adding, after the manner of his zeal, two new Festival and Vacation Days.

Canuti
Leg. c. 17.

And þe 7 onbeobað opðal 7 aðar 7 neol7 dagum. 7 ymbnen dagum. 7 niht 7 ærten dagum. 7 fram Adventum Domini of 7e eahtoða dag aȝan 77 ofen 7 pelyta dæg: &c.

We forbid Ordeal and Oaths on Feast-days and Ember-days, and in Lent and set Fasting-days; and from the Advent of our Lord till the eighth Day

^a Leg. Alur. cap. 39. ^b 'Twas held between the Years 1006. and 1013. See the Author's Conc. Britan. Tom. 1. pag. 510. ^c The Word Synod here signifies more than Council, not as 'tis usually restrained to that of the Clergy only. ^d Concil. Eanham. Can. 15. ^e Can. 16. ^f Can. 17. Can. 18.

after

after the twelfth be past; and from Septuagesima till fifteen Nights after Easter. And the Sages have ordained that St. Edward's Day shall be Festival over all England on the fifteenth of the Kalends of April, and St. Dunstan's on the fourteenth of the Kalends of June; and that all Christians (as right it is) should keep them hallowed and in peace.

Canutus, following the Synod of Eanham, setteth down in the Paragraph next before this recited, which shall be Festival and which Fasting-days, appointing both to be Days of Vacation. Among the Fasting-days he nameth the Saints Eves and the Fridays; but excepteth the Fridays when they happen to be Festival-days, and those which come between Easter and Pentecost; as also those between Midwinter (so they called the Nativity of our Lord) and Octabas Epiphaniæ. So that, at this time, some Fridays were Law-days and some were not. Those in Easter Term, with the Eve of Philip and Jacob, were; and the rest were not. The reason of this Partiality (as I take it) was; they fasted not at Christmas for joy of Christ's Nativity, nor between Easter and Whitsuntide, for that Christ continued upon the Earth, from his Resurrection till his Ascension; and * the Children of the Wedding may not fast so long as the Bridegroom is with them: Nor till Whitsuntide, for joy of the coming of the Holy Ghost.

* Matth.
ix. 15.
Mar. ii.
19.

CHAP. IX.

The Constitution of Edward the Confessor most material.

Saint Edward the Confessor drew this Constitution of Canutus nearer to the Course of our time, as a Law, in these Words: * *Ab Adventu Domini usque ad Octabas Epiphaniæ pax Dei & sanctæ Ecclesiæ per omne Regnum; similiter à Septuagesima usque ad Octabas Paschæ; item ab Ascensione Domini usque ad Octabas Pentecostes; item omnibus diebus quatuor temporum; item omnibus Sabbatis ab hora nona, & tota die sequenti, usque ad diem Lunæ; item Vigiliis Sanctæ Mariæ, Sancti Michaelis, Sancti Johannis Baptiste, Apostolorum omnium & Sanctorum quorum Solennitates à Sacerdotibus Dominicis annunciantur diebus; & Omnium Sanctorum in Kalendis Novembris, semper ab hora nona vigiliarum, & subsequenti solennitate: Item in Parochiis in quibus Dedicationis dies observatur; item Parochiis Ecclesiarum ubi propria Festivitas Sancti celebratur, &c.* The Rubrick of this Law is, *De temporibus & diebus Pacis Regis*, intimating Term-time; and here in the Text the Vacations are called *Dies Pacis Dei & sanctæ Ecclesiæ*, as I^b said in the beginning. But *Pax Dei, Pax Ecclesiæ, & Pax Regis*, in other Laws of Edward the Confessor, and elsewhere, have other Significations also more particular. *Hora nona* is here (as in all Authors of that time) intended for three of the Clock in the Afternoon, being the ninth hour of the artificial Day; wherein the Saxons, as other Parts of Europe, and our Ancestors of much later time, followed the Judaical Computation; perhaps till the Invention and Use of Clocks gave a just Occasion to alter it, for that they could not daily vary for the unequal Hours.

* *Leges Edv. Conf. cap. 9.* ^b *Secl. 2.*

CHAP. X.

The Constitution of William the Conqueror.

THIS Constitution of *Edward* the Confessor was amongst his other Laws confirm'd by *William* the Conqueror; as not only *Hoveden* and those ancient Authors testify, but by the Decree of the Conqueror himself, in these words: *Hoc quoque præcipio, ut omnes habeant & teneant Leges Edwardi in omnibus rebus, adauctis his quæ constituimus ad utilitatem Anglorum.* And in those Auctions nothing is added, alter'd, or spoken, concerning any part of that Constitution. Neither is it like, that the Conqueror did much innovate the Course of our Terms or Law-days, seeing he held them in his own Duchy of *Normandy*, not far differing from the same manner, having received the Customs of that his Country from this of ours, by the hand of *Edward* the Confessor; as in the beginning of their old *Customary* themselves do acknowledge. The Words touching their Law-days or Tryals be these, under the Title *De temporibus quibus Leges non debent fieri*: *Notandum autem est, quod quedam sunt tempora in quibus Leges non debent fieri, nec simplices, nec apertæ, viz. omnia tempora in quibus Matrimonia non possunt celebrari. Ecclesia autem Legibus apparentibus omnes dies Festivus prohibet, & defendit, viz. ab hora nona die Jovis, usque ad ortum Solis die Lunæ sequenti, & omnes dies solennes novem Lectionum & solennium Jejuniorum, & Dedicationis Ecclesiæ in qua Duellum est deducendum.* This Law doth generally inhibit all Judicial Proceedings, during the Times wherein Marriage is forbidden, and particularly all Tryals by *Battail*, (which the *French* and our *Glawvil* call *Leges apparentes, alias apparibiles, vulgarly Loix Apparisans*) during the other Times therein mention'd. And it is to be noted, that the Emperour *Frederick* the Second, in his *Neapolitan Constitutions*, includeth the Tryals by *Ordeal* under *Leges paribiles*. But touching the Time wherein Marriage is forbidden; it agreed at that day with the Vacations from Law-busines, prescrib'd by *Edward* the Confessor; the Church not thinking it reason, that Men abstaining from Litigation should give themselves to Lust, and to Feasting and Dancing (things incident to Marriage:) In which respect, it also required that Man and Wife (as near as they could) should at these times forbear the Pleasure of their Bed, and give themselves to Devotion and Piety. For tho' covetous Persons have since abused that godly Institution to their profit, yet the Fathers that were Authors of it in *Ilerdensi Concilio*, about 500 Years after *Christ*, aim'd at nothing, but meerly Sanctity. The Times of Marriage, prohibited according to the Constitution of the Church, were these: *À prima Dominica Adventus, usque ad Octavas Epiphaniæ exclusivæ: & à Dominica Septuagesimæ usque ad primam Dominicam post Pascha inclusivæ: & à prima die Rogationum usque ad septimum diem festi Pentecostes inclusivæ.* The Law-Vacation, according to the Prescription of *Edward* the Confessor, is, *ab Ascensione Domini usque ad Octavas Pentecostes.* But here, the Wedding-vacation is three days before it, viz. *à prima die Rogationum*; which is according to the Constitution *de Feriis, ca. Capellanus*. So that the Term-times, and Vacations, of the *English* and *Normans*, were anciently all one; and our Ecclesiastical Courts hold it so to this day. Of the *Dies novem Lectionum* before mention'd, we shall speak anon.

LL.Edw.
Conf.c.9.

^a In Hen. 11. pag. 600. ^b Lamb. exord. LL. Guliel. Cod. MS. ^c In descrip. Norman. ^d Custom. cap. 80. ^e Lib. 4. c. 1. Lib. 14. c. 1, 2. ^f Lib. 2. c. 31. ^g Gloss. Can. 33. q. 4. ca. Non oportet in Quadrages. ^h Lindo. Clan. Despons. ca. Omnia. v. Solempn. Decr. Grat. de Feriis, ca. Capellanus. Decr. Grat. Can. 33. q. 4. ca. Non oportet à Septuag. Belet. de Divin. Offic. ca. 65.

CHAP. XI.

What done by William Rufus, Henry I. King Stephen, and Henry II.

AS for *William Rufus*, we read that he pulled many Lands from the Church, but not that he abridged the Vacation-times assigned to it.

Henry I. upon view of former Constitutions, composed this Law under the Title, *De Observatione Temporis Leges faciendi, viz. ab Adventu Domini usque ad Octabis Epiphaniæ, & à Septuagesima usque ad 15. Dies post Pascham, & Festis Diebus, & Quatuor Temporum, & Diebus Quadragesimalibus, & aliis legitimis Jejuniis, in Diebus Veneris, & Vigiliis sanctorum Apostolorum non est tempus Leges faciendi, idem vel Jusjurandum (nisi primo Fidelitate Domini vel Concordia) vel Bellum, vel Ferri, vel Aquæ, vel Leges Exactionis tractari: Sed sit in omnibus vera Pax, beata Charitas, ad Honorem Omnipotentis Dei, &c.* The Copies of these Laws are much corrupted, and it appeareth by *Florence Wigorn's Continuer*, that the *Londoners* refused them, and put *Maud* the Empress to an ignominious flight when she pressed the Observation of them. But in this particular branch there is nothing not agreeable to some former Constitution. The Word *Bellum* here signifieth *Combats*, which among our *Saxons* are not spoken of, and by those of *Ferri vel Aquæ*, are meant *Ordeal*. An. Dom. 1142.

King Stephen by his Charter recited at *Malmesbury*, confirmed and established by a Generality, *bonas Leges, & antiquas, & justas Consuetudines.*

Henry the II. expressly ratified the Laws of *Edward the Confessor* and *William the Conqueror*, as *⁠Hoveden* telleth us, saying, *That he did it by the Advice of Ranulph Glanvil then newly made Chief Justice of England;* which seemeth to be true, for that *⁠Glanvil* doth accordingly make some of his Writs returnable, in *Octabis*, or *Clauso Pasche*, where the Laws of *Edward the Confessor* appoint the end of Lent Vacation: And *⁠Gervasius Tilburienſis* also mentioneth the same Return. Yet the MSS. Laws of *Henry II.* which remain in the Red-book of the *Exchequer*, following the Synod of *Eanham*, extendeth Lent Vacation, à *Septuagesima usque 15. Dies post Pascha*, and layeth out the whole frame of the Year in this manner, under the Rubrick *De Observatione Temporis Leges faciendi, viz. Ab Adventu Domini usque ad Octabis Epiphaniæ, & à Septuagesima usque ad quindecim Dies post Pascha, & Festis Diebus, & Quatuor Temporum, & Diebus Quadragesimalibus, & aliis legitimis Jejuniis in Diebus Veneris & Vigiliis singulorum Apostolorum non est tempus Leges faciendi, idem vel Jusjurandum (nisi primo Fidelitate Domini, vel Concordia) vel Bellum, vel Ferri, vel Aquæ, vel Leges Examinationis tractari: Sed sit in omnibus vera Pax (&) beata Charitas ad Honorem Omnipotentis, cujus Sapientia conditi sumus, Nativitate proventi, Morte redempti, Consolatione securi; & qui Debitor est, persolvat ante vel induciet, donec Dies isti transeant, Gaudiis & honestis Voluptatibus instituti. Et si quis Maleficium inter manus habens, alicubi retinetur; ibi purgetur vel sordidetur, si solum Inculpato, Plegiis si opus est datis, ubi justum fuerit terminanda revertatur.*

^a Leg. Hen. I. d. 62. ^b Hist. Nov. lib. 1. pag. 179. ^c In Hen. II. pag. c. 600. ^d Lib. 2. cap. 11. ^e Dial. Scacc. ^f Ca. 62.

CHAP. XII.

The Terms laid out according to these ancient Laws.

TO lay out now the Bounds of the Terms according to these Canons and Constitutions, especially that ancient Law of *Edward the Confessor*; it thus appeareth, viz.

Hilary-
Term.

Hilary-Term began then certainly at *Octabis Epiphaniæ*, that is the thirteenth Day of *January*, seven Days before the first Return it now hath, and nine Days before our Term beginneth; and ended at the Saturday next before *Septuagesima*, which being moveable made this Term longer in some Years than in others. *Florentius Wigorniensis*, and *Walsingham* in his *Hypodigma Neustriæ* saith, --- Anno 1096. In *Octabis Epiphaniæ apud Sarisburiam* Rex *Gulielmus* [Rufus] tenuit Consilium, in quo iussit *Gulielmi de Anco in Duello victi Oculos eruere, & Testiculos abscindere, & Dapiferum illius Gulielmum de Alderi, Filium Amitæ illius suspendi, &c.* proceeding also judicially against others. Tho' *Walsingham* calleth this *Consilium* with an *s*, a Counsel, and *Wigorniensis Concilium* with a *c*, an Assembly, (the Word *Term* perhaps not being in use under *William Rufus*;) yet it seemeth to be no other, than an Assembly of the *Barons*, in the King's House or Court of State, (which was then the ordinary Place of Justice for Crimes of this nature.) For the *Barons* of the Land were at that time Judges of all Causes, which we call Pleas of the Crown, and of all others belonging to the Court of the King. The Proceeding also against these Offenders seemeth meerly *Legal*, and not *Parliamentary*, or *ex Arbitrio*: For the Tryal was according to Law, by Battel; and the Judgment (after the manner of the time) by putting out the Eyes and mutilation of the privy members. As for putting Men to death, I confess that it was not at this time ordinary: For *William* the Conqueror had made a Law: *Interdico nequis occidatur, vel suspendatur pro aliqua culpa; sed eruantur Oculi, & abscindantur Testiculi*. But as himself observ'd it not; so his Son made not nice in breaking of it. And I think the *Barons* of that time did in many things, (especially Crimes of Treason) *ex Arbitrio judicare*. Besides this, if it had been other than an ordinary course of Justice, they would not have call'd it *Consilium* or *Concilium* simply; but *magnum Concilium* or *commune Concilium Regni*, as the phrase then was for Parliaments. Lastly, tho' it had been a Parliament, yet they could not, or at least they would not break the Constitutions of the Church, by meddling with Tryals of Crime and Blood, in *Diebus Pacis Ecclesiæ*: and therefore we must conceive it to be done in Term-Time, & *Diebus Pacis Regis*, as the Canons alledg'd and assign'd it.

I meet also with a precedent to this purpose in *Radevicus* under the Year 1160. whereby it appears, that they began their Term or Law-day likewise beyond the Seas at *Octabis Epiphaniæ*. *Curia* (says he) *quæ in Octavis Epiphaniæ Papia fuerat indicta, usque in sextam Feriam proxime ante caput Jejunii (quia in Destructione Crema Dominus Imperator detinebatur) est dilata*.

Cust. vet.
cap. 80.

The Norman Customary sheweth also expressly, that this Term began at *Octabis Epiphaniæ*; in saying, that their Law-days began and went out with the times of celebrating Marriage: which in this Part of the Year (as we shewed before) came in at *Octab. Epiphaniæ*, and went out at *Septuagesima*, as it still doth. And the Court of the Arches doth still hold the same Beginning. The Exchequer also being brought out of *Normandy*, seemeth to retain at this Day the steps of the *Norman Custume*. For in that it openeth

^a Hypodig. Neust. An. 1096. Malm. p. 124. ^b LL. Gul. R. Sen. c. 19. ^c De Gest. Freder. I. lib. 2. c. 72.

eight days before the beginning of the Term, it openeth upon the matter at *Octabis Epiphaniae*: By which it appeareth that it was then no Vacation, and that the Term was begun at *Octabis Epiphaniae*; whereby it is the liker also that it ended at *Septuagesima*, lest beginning it, as we now do, it might fall out some Years to have no *Hilary-Term* at all, as shall anon appear. And this our ancient use of ending the Term at *Septuagesima* is some Inducement to think, the Council of *Erpford* is depraved, and that the Word there *Quinquagesima* should be *Septuagesima*, as the gloss there reporteth it to be in some other Place: And as well *Grasian* mistaketh this, as he hath done the Council it self, attributing it to *Ephesus* a City of *Ionis*, instead of *Erpford* a Town in *Germany*; where *Burchard* before him, and *Binius* since, do now place it.

Concil.
Tom. 3.

It comes here to my Mind, what I have heard an old *Chequer-man* many Years ago report, that this *Term* and *Trinity-Term* were in ancient time either no *Terms* at all, or but as reliques of *Michaelmas* and *Easter-Terms*, rather than just *Terms* of themselves: Some courses of the *Chequer* yet encline to it. And we were both of the Mind, that want of Business (which no doubt in those Days was very little) by reason *Suits* were then for the most Part determined in inferiour Courts, might be the Cause thereof. But I since observe another Cause, viz. That *Septuagesima* or Church-time one while trode so near upon the heels of *Octabis Epiphaniae* (I mean came so soon after it,) as it left not a whole week for *Hilary-Term*; and again, another while, *Trinity Sunday* fell out so late in the Year, that the common Necessity of Hay-seed and Harvest, made that *Term* very little and unfrequented.

Mr. Art.
Agard.

For inasmuch as *Easter* (which is the *Clavis*, as well to shut up *Hilary-Term*, as to open *Trinity-Term*) may, according to the general Council of *Nice*, holden in the Year 322. fall upon any Day between the 21st. of *March* exclusively, which then was the *Aequinoctium*, and the 25. of *April* inclusively, (as the farthest Day that the Sunday following the Vernal Full-Moon can happen upon;) *Septuagesima* may sometimes be upon the eighteenth of *January*, and then could they in ancient time not have above four Days *Term*, and we at this day no *Term* at all, because we begin it not till the 23^d. of *January*, which may be six days after the *Septuagesima*, and within the time of Church-Vacation. But what *Hilary-Term* hath now lost at the beginning of it, it hath gained at the latter ending. Of *Trinity-Term* I shall speak more by and by.

CHAP. XIII.

Easter-Term.

Easter-Term, which now beginneth two Days after *Quindena Pasche*, began then as the Law of *Edward* the Confessor appointed it, at *Octabis*. This is verified by *Glanvil*, who maketh one of his Writs returnable thus; *Rex &c. Summone per bonos Summonitores quatuor Legales Milites de vicineto de Stock, quod sint ad Clausum Pasche coram me vel Justiciis meis apud Westmonasterium ad eligendum supra Sacramentum suum duodecim Legales Milites*. But, as it began then nine Days sooner than it now doth, so it ended six or seven Days sooner, viz. before the Vigil of *Ascension*; which I take to be the meaning of the Law of *Edward* the Confessor, appointing the time from the *Ascension* (inclusive) to the *Octaves* of *Pentecost*, with *Ascension-Eve*, to be *dies Pacis Ecclesie*, and Vacation.

CHAP. XIV.

Trinity-Term.

TTrinity-Term therefore in those Days began as it now doth (in respect of the Returns) at *Octab. Pentecostes*, which being always the Day after Trinity Sunday, is now by the Stat. of 32. of Hen. VIII. appointed to be called *Craftino Trinitatis*. But it seemeth that the Stat. of 51. of Hen. III. changed the beginning of this Term from *Craftino Trinitatis*, to *Octabis Trinitatis*, and that therefore the Stat. of Hen. VIII. did no more in this point than reduce it to the former Original. As touching the end of this Term, it seemeth also that the said Stat. of 51. Hen. III. assigned the same to be within two or three Days after *Quindena Sancti Johannis*, (which is about the twelfth of July) for that the Statute nameth no Return after.

Stat. 32.
Hen. VIII.
ca. 21.

But, for ought that hindreth by the Canons, it is *tanquam Terminus sine Termino*; for, there was no set Canon or Ecclesiastical Law (that I can find) to abridge the Continuance thereof till *Michaelmas*, unless the seven Days next before St. John Baptist, were (according to the Canon of *Erpford*) used as Days of Intermission, when they fell after the *Octaves* of Pentecost as commonly they do; tho' this Year 1614. four of them fell within them: and except the Ember-days meet after Holy-Rood; for *Jejunia Quatuor Temporum*, as well by the Laws of *Canutus*, and *Edward* the Confessor, as by all other almost before recited, are either expressly or implicitly exempted from the Days of Law. But when Trinity Sunday fell near the Feast of St. John Baptist, then was the first Part of this Term so thrust up between those Days of the Church, that it was very short; and the latter Part being always fixt, did so hinder Hay-seed and Harvest following, that either the course of it must be shortned, or it must still usurp upon the time allotted by Nature to collect the fruits of the Earth.

For as Religion closed the Courts of Law in other Parts of the Year, so now doth publick Necessity stop the Progress of them; following the Constitution of *Theodosius*, thus decreeing; --- *Omnes Dies jubemus esse Juridicos. Illos tamen remanere Feriarum Dies fas est geminis Mensibus; ad requiem Laboris indulgentior Annus exceptit: æstivis quoque fervoribus mitigandis, & autumpnis fructibus decerpendis.* This is also confirmed in the *Canon Conquestus*; and in *Gratian* with the Glosses upon them, to which I leave you. But it is of old thus expressed by *Statius*, as if it were *ex jure Gentium*:

*Certe jam Latia non miscent jurgia Leges,
Et pacem piger Annus habet, Messesque reversæ
Dimisere Forum: nec jam tibi turba reorum
Vestibulo, querulique rogant exire Clientes.*

The *Latian* Laws do no man now molest,
But grant this weary season Peace and Rest;
The Courts are stopt when Harvest comes about,
The Plaintiff or Defendant stirs not out.

So the *Longobards* (our Brethren as touching Saxon Original) appointed for their Vintage a particular Vacation of thirty Days, which *Paulus Diaconus*

^a Cod. de Feriis, l. 2. ca. 20. l. fin. & ff. l. omnes dies. ^b Tit. de Feriis, Ca. 5. ^c Cat. 15. quest. 4.
^d Sylvarum Li. 4. ^e Hist. Longob. Lib. 3. cap. 12.

doth thus mention: *Proficiscentes autem eo ad Villam, ut juxta ritum imperialem triginta diebus ad Vindemiam jucundaretur.* So also the Western Goths (a Branch of the Northern Nations) ordain'd *pro messivis Feriis, à 15. Kal. Augusti, usque ad 15. Kal. Septembris, &c. observandas.* Whereby it appeareth, that this Time was not only a Time of Vacation in those ancient Days, but also of Feasting and Merriment, for receiving the Fruits of the Earth; as at *Nabal* and *Absalom's* Sheep-shearing, and in divers Parts of *England* at this day. So the *Normans*, whose Terms were once not so much differing from ours, might not hold their Assizes, or Times of Law, but after Easter and Harvest; (that is, after the Times of holy Church and publick Necessity) as appeareth by their *Customary*. And forasmuch as the *Swainmote-Courts* are by the ancient Forest-Laws appointed to be kept fifteen Days before *Michaelmas*; it seemeth to be intended that Harvest was then done, or that in Forests little or no Corn was then used to be sown.

But it is to be remembred, that this Vacation by reason of Harvest, Hay-secd, Vintage, &c. was not of so much Solemnity as those in the other parts of the Year, and therefore called of the Civilians, *Dies Feriati minus solennes*; because they were not dedicated *divino cultui*, but *humana necessitati*. Therefore tho' Law Business was prohibited on these Days, to give Ease and Freedom unto Suiters, whilst they attended on the Store-house of the Commonwealth; yet was it not otherwise than that by Consent of Parties they might proceed in this Vacation; whereof see the *Decreta Gregorii*. To this effect, in a MS. of the Lives of the Abbots of *St. Albans*, I meet with this Precedent: That 4. Non. Aug. Anno Dom. 1328. *Indictione II. Comparentibus judicialiter coram nobis Offic. Cur. Eborum, Commissario Generali in majore Ecclesia Eborum, loco Consistorii ejusdem, pro Tribunali sedentibus fratre Johanne de Redburne, Monacho Mon. S. Alban, Ordinis S. Benedicti Lincolnienfis Diocesis. Procuratore, Relig. Virorum Dominorum Abbatibus & Conventus ejusdem Monasterii verorum Patronorum Ecclesie de Appleton in Rydale Eborum Dioc. Procuratorio pro eisdem ex una, ac Domino Waltero Flemengs Rectore ejusdem Ecclesie personaliter ex altera: Idem Dominus Walterus Rector, tempore Messium non obstante, ipsoque tunc in nobis ut in Judice suo ad infra scripta judicialiter consentiente, fatebatur se teneri dictis Dominis Abbati & Conventui & eorum Monasterio in 14. libris argenti, nomine Pensionis sex marcarum annuarum eisdem Religiosis ab eo & dicta sua Ecclesia de tempore quo Rector ejusdem Ecclesie extitit, debiturum, & per eundem per idem tempus subtractis.*

CHAP. XV.

Of Michaelmas-Term according to the ancient Constitutions.

Michaelmas-Term (as the Canons and Laws aforesaid leave it) was more uncertain for the Beginning than for the End. It appeareth by a Fine taken at *Norwich*, 18. Hen. III. that the Term was then holden there, and began within the Octaves of *St. Michael*; for the Chirograph of it is: *Hec est finalis Concordia facta in Curia Domini Regis apud Norwicum, die Martis proximo post Festum Sancti Michaelis, anno regni Regis Henrici filii Regis Johannis 18. coram Tho. de Mulet, Rob. de Lexint, Olivero, &c. I*

^a Wisegoth. Lib. 2. tit. 1. l. 11. ^b Swainmote or Swanmote (from the Saxon *swægn*, i. e. a Country-Glown or Freeholder, and *mot* or *gemot* Conventus) is a Court of Freeholders within the Forest. See 3. Hen. VIII. cap. 8. ^c Lib. 2. cap. 21.

observe that the Tuesday next after St. Michael can (at the farthest) be but the seventh Day after it, and yet it then must be a Day within the Octaves; whereas the Term now beginneth not till the third Day after the Octaves.

^b Gervasius Tilburicensis, who lived in Hen. II's time, hath a Writ in these words: — *N. Rex Anglorum [illi vel illi] Vicecomiti salutem. Vide, sicut teipsum & omnia tua diligis, quod sis ad Scaccarium [ibi vel ibi in Crastino Sancti Michaelis, vel in Crastino Clausi Pasche] & habeas ibi tecum quicquid debes de veteri firma & nova, & nominatim hac debita subscript. viz. &c.* By which it appeareth, that the Term in the Exchequer, as touching Sheriffs and Accomptants, and consequently in the other parts, began then as now it doth; saving that the Statute *De Scaccario*, 51. Hen. III. hath since appointed, *That Sheriffs and Accomptants shall come to the Exchequer the Monday after the Feast of St. Michael, and the Monday after the Utas of Easter*.* Which Time, not being Ferial or Church-days, is freely allow'd to Term-business, if the Octaves of St. Michael had no Privilege; of which hereafter. It is to be noted, that the Term in the Exchequer hath one Return at the beginning of every Term before the first Return in other Courts, excepting Trinity-Term; viz. Crastino S. Michaelis, in Michaelmas-Term; Octabis S. Hilarii, in Hilary-Term; and Octabis or Clausum Pasche, in Easter-Term. And it seemeth that Crastino Trinitatis was so likewise in Trinity-Term before the Stat. 32. Hen. VIII. And these Returns, or the space of eight Days, in which the Exchequer is open before the full Term, (which now we commonly call the Beginning of the Term) are counted to be Term-time, as appeareth by the said Statute, where it is thus enacted: *That Trinity-Term shall begin the Monday next after Trinity-Sunday, for keeping of the Essoigns, Profers, Returns, and other Ceremonies heretofore used, &c.* And that the full Term of the said Trinity-term, shall yearly for ever begin the Friday†. . . .

* But the Assignees to take cognizance of Weights and Measures, by the Statute of 14. Ed. III. c. 12. are notwithstanding appointed to deliver their Essoigns, lendenmaine de S. Michel, the morrow after Michaelmas-day. Rastal, Weights and Measures.

† Here seems to be something wanting.

The End is certainly prefixed by the Canons and Laws aforesaid, that it may not extend into Advent. And it holdeth still at that mark; saving that because Advent Sunday is moveable, according to the Dominical Letter, and may fall upon any Day between the twenty sixth of November and the fourth of December, therefore the twenty eighth of November (as a middle Period by reason of the Feast and Eve of St. Andrew) hath been appointed to it. Howbeit when Advent Sunday falleth on the twenty seventh of November, as sometimes it doth, then is the last Day of the Term (contrary to the Canons and former Constitutions) held in Advent, and consequently void, if Custom help it not, or, for more security, the Statute of 3. Edw. I. ca. 48. where the Bishops, at the King's request, admit Assizes and Inquests to be taken in Advent, as it after shall more largely appear.

CHAP. XVI.

The later Constitutions of the Terms.

TO leave Obscurity, and come nearer the Light, it seemeth by the Statutes of 51. Hen. III. called *Dies Communes in Banco*, that the Terms did then either begin and end as they do now, or that those Statutes did lay them out, and that the Statute of 36 Edw. III. cap. 15. confirmed that Use: For the Returns there mentioned are neither other, more or fewer than at this day.

* Before the Abbreviation by 16. Car. I. cap. 6. ^b Dial. lib. 2. cap. 2. ^c Ca. 21.

CHAP. XVII.

How Trinity-Term was alter'd and shortned.

Trinity-Term is alter'd and shortned by the Statute of 32. *Hen. VIII.* cap. 21. which hath ordained it *quoad Sessionem*, to begin for ever the Friday after *Corpus Christi* Day, and to continue nineteen Days; whereas in elder Times it began two or three Days sooner. So that *Corpus Christi* Day being a moveable Feast, this Term cannot hold any certain station in the Year; and therefore this Year 1614. it began on St. *John Baptist's* Day, and the last Year it ended on his Eve. Hereupon, tho' by all the Canons of the Church, and former Laws, the Feast of St. *John Baptist* was a solemn Day, and exempt from legal Proceedings in Courts of Justice; yet is it now no Vacation-day, when *Corpus Christi* falleth (as it did this Year 1614.) the very Day before it: For that the Statute hath appointed the Term to begin the Friday next after *Corpus Christi* Day, which was this Year the Day next before St. *John Baptist*, and so the Term must of necessity begin on St. *John Baptist's* Day. This deceived all the Prognosticators, who counting St. *John Baptist* for a grand Day, and no Day in Court, appointed the Term in their Almanacks to begin the Day after, and consequently to hold a Day longer; deceiving many by that their Error.

But the afore said Statute of 32. *Hen. VIII.* changed the whole Frame of this Term: For it made it begin sooner by a Return, viz. *Crastino Sanctæ Trinitatis*, and thereby brought *Octabis Trinitatis*, which before was the first Return, to be the second; and *Quindena Trinitatis*, which before was the second, now to be the third; and instead of the three other Returns of *Crastino*, *Octabis*, and *Quindena Sancti Johannis*, it appointed that which before was no Return, but now the fourth and last, called *Tres Trinitatis*.

The Altering and Abbreviation of this Term is declared by the Preamble of the Statute to have risen out of two Causes; one for Health, in dismissing the Concourse of People in that contagious Time of the Year; the other for Wealth, that the Subject might attend his Harvest, and gathering in the Fruits of the Earth. But there seemeth to be a third also not mention'd in the Statute, and that is, the uncertain Station, Length and Returns of the first part of this Term, which, like an *Excentrick*, was one Year near to St. *John Baptist*, another Year far removed from it; and thereby making the Term not only various, but one Year longer, and another shorter, according as *Trinity-Sunday* (being the *Clavis* to it) fell nearer or farther off from St. *John Baptist*. For if it fell betimes in the Year, then was this Term very long, and the two first Returns of *Octabis* and *Quindena Trinitatis* might be past and gone a Fortnight and more, before *Crastinum Sancti Johannis* could come in: And if it fell late, (as this Year 1614. it did) then would *Crastinum Sancti Johannis* be come and past, before *Octabis Trinitatis* were gone out. So that many times one or two of the first Returns of this Term (for ought that I can see) must in those days needs be lost.

* This Chapter is inserted in the Edition of 1684.

* CHAP. XVIII.

How Michaelmas-Term was abbreviated by Act of Parliament, 16 Car. I. cap. 6.

THE last place our Statute-Book affords upon this Subject of the Limits and Extent of the Terms, is the Stat. 16 Car. I. cap. 6. intituled, *An Act concerning the Limitation and Abbreviation of Michaelmas-Term*. For whereas by former Statutes it doth appear, that *Michaelmas-Term* did begin in *Octabis Sancti Michaelis*, that Statute appoints, that the first Return in this Term shall ever hereafter be *à die Sancti Michaelis in tres Septimanas*, so cutting off no less than two Returns from the ancient Beginning of this Term, viz. *Octabis Sancti Michaelis*, & *à die Sancti Michaelis in quinde-cim dies*, and consequently making the Beginning of it fall a Fortnight later than before. Wherefore the first Day in this Term will always be the twenty third Day of *October*, unless it happen to be Sunday, for then it must be defer'd till the Day following; upon which account we find it accordingly placed on the twenty fourth for the Year 1681. This is all the Alteration that Statute mentions; and therefore for the End of *Michaelmas-Term*, I refer the Reader to what our Author has said already in the 15th Chapter. It may not be amiss, in pursuit of our Author's Method, to set down the Motives of making this Abbreviation, as we find them reckon'd up in the Preamble to that Statute. There we find, that the old Beginning of *Michaelmas-Term* was generally found to be very inconvenient to his Majesty's Subjects both Nobles and others. First, For the keeping of Quarter-sessions next after the Feast of St. Michael the Archangel. Secondly, For keeping their Leets, Law-days and Court-Barons. Thirdly, For the sowing of Land with Winter-corn, the same being the chief time of all the Year for doing it. Fourthly, For the disposing and setting in order of all their Winter-husbandry and Business. Fifthly, For the receiving and paying of Rents. Sixthly, Because in many Parts of this Kingdom, especially the most Northern, Harvest is seldom or never inned till three Weeks after the said Feast. All which Affairs they could before by no means attend, in regard of the Necessity of their coming to the said Term, so speedily after the Feast of St. Michael the Archangel, to appear upon Juries, and to follow their Causes and Suits in the Law.

SECT. V.

Other Considerations concerning Term-Time.

HAVING thus laid out the Frame of the Terms, both according to the Ancient and Modern Constitutions, it remaineth that we speak something of other Points properly incident to this part of our Division touching *Term-Time*, viz.

1. Why the Courts sit not in the Afternoons.
2. Why not upon some whole Days, as on Grand-days, double Feasts, and other exempted Days, and the reason of them.
3. Why some Law Business may be done on Days exempted.
4. Why the End of *Michaelmas-Term* is sometimes holden in *Advent*, and of *Hilary-Term* in *Septuagesima*, *Sexagesima*, and *Quinquagesima*.
5. Why

5. Why the Assizes are holden in *Lent*, and at times generally prohibited by the Church.
6. Of *Returns*.
7. Of the *Quarta Dies post*.
8. Why I have cited so much Canon, Civil, Feodal, and foreign Laws in this Discourse, with an excursion into the Original of our Laws.

CHAP. I.

Why the High Courts sit not in the Afternoons.

IT is now to be considered, why the high Courts of Justice sit not in the Afternoons. For it is said in *Exodus*, that *Moses* judged the *Israelites* from Morning to Evening. And the *Romans* used the Afternoon as well as the Forenoon; yea, many times the Afternoon and not the Forenoon, as upon the Days called *Endotercismi* or *Intercisi*, whereof the Forenoon was *Nefastus* or Vacation, and the Afternoon *Fastus* or Law-days, as we shewed in the beginning. And the Civilians following that Law do so continue them amongst us in their Term at this Day. But our Ancestours and other the Northern Nations being more prone to distemper and excess of Diet (as the Canon Law noteth of them) used the Forenoon only, lest repletion should bring upon them drowsiness and Oppression of Spirit; according to that of St. *Jerome*, *Pinguis Venter non gignit Mentem tenuem*. To confess the truth, our *Saxons* (as appeareth by *Huntington*) were immeasurably given to drunkenness. And it is said in *Ecclesiastes*, *Vae Terra cujus Principes mane comedunt*. Therefore to avoid the inconvenience depending hereon, the Council of *Nice* ordained, that *Judices non nisi jejuni. Leges & Judicia decernant*. And in the Council of *Salgunstad* it was after decreed, *Ut Lectio Niceni Concilii recitetur*, which being done in the Words aforesaid, the same was likewise there confirm'd. According to this, in the Laws of *Carolus Magnus* the Emperour it is ordained, (*Longobard. lib. 2.*) *Ut Judices jejuni Causas audiant & discernant*: and again in the *Capitulars Caroli & Lodovici, ne placitum Comes habeat nisi jejunus*. Where the Word *Comes*, according to the phrase of that time, is used for *Judex*, as elsewhere we have at large declared. To the same effect is the *Capitular ad Legem Salicam*: and out of these and such other Constitutions ariseth the rule of the Canon Law, that *Quae à Prandio sunt Consultationes, inter decreta non referuntur*. Yet I find that Causes might be heard and judged in the Afternoon; for in *Capitulars lib. 2. Can. 33.* and again *lib. 4. Can. 16.* it is said, *Cause viduarum, pupillorum & pauperum audiantur & definiantur ante Meridiem, Regis vero & Potentium post Meridiem*. Which tho' it seem contradictory to the Constitutions aforesaid, yet I conceive them to be thus reconcilable: that the Judges (sitting then but seldom) continued their Courts both Forenoon and Afternoon, from Morning till Evening without dinner or Intermision, as at this Day they may, and often do, upon great Causes: tho' being risen and dining, they might not meet again; yet might they not sit by Night, or use Candel-light, *Quod de Nocte non est honestum judicium exercere*. And from these ancient rites of the Church and Empire is our Law derived, which prohibiteth our Jurours, being *Judices de Facto*, to have meat, drink, Fire or Candel-light, till they be agreed of their verdict.

^a Hist. lib. 6. ^b Cap. x. ^c Tit. 53. cap. 4. ^d Lib. 3. can. 38. ^e Archæol. verb. Comes. cap. 1. §. 13. & alia Capit. Caroli §. 4. ^f De Offic. del. Consultit.

It may be here demanded how it cometh to pass, that our Judges after dinner do take *Affizes* and *Nisi prius* in the Guild-hall of *London*, and in their Circuits? I have yet no other answer but that ancient Institutions are discontinued often by some Custom grating in upon them, and changed often by some latter Constitution; of which kind the Instances aforesaid seem to be. For *Affizes* were ordained many Ages after by *Henry II.* as appeareth by the Charter of *Beverly, Glanvil* and *Radulphus Niger*; and *Nisi prius* by *Edward I.* in the Statutes of *Westminster 2.* tho' I see not but in taking of them the ancient course might have been continued, if haste would suffer it.

CHAP. II.

Why they sit not at all some Days.

THOUGH there be many Days in the Terms, which by ancient Constitutions before recited are exempted from Law-business, as those of the Apostles, &c. and that the Statute of *Edw. VI.* appointed many of them to be kept Holy-days, as dedicated, not unto Saints, but unto divine worship, which we also at this Day retain as Holy-days: Yet do not the high Courts forbear sitting in any of them, saving on the feast of the *Purification*, the *Ascension*, *St. John Baptist*, *All-Saints*, and the Day after, (tho' not a feast) called *All-Souls*. When the others lost their Privilege and came to be Term-days, I cannot find; it sufficeth that Custom hath repealed them by Confession of the *Canonists*. Yet it seemeth to me, there is matter for it in the Constitutions of our Church, under *Islepe* Arch-bishop of *Canterbury* in the time of *Edward III.* For tho' many ancient Laws and the Decretals of *Gregory IX.* had ordained *Judicalem strepitum Diebus conquiescere Feriatis*; yet in a Synod then holden, wherein all the Holy-days are appointed and particularly recited, no restraint of Judicature or *Forensis strepitus* is imposed, but a cessation only *ab universis servilibus Operibus, etiam Reipublice utilibus*. Which tho' it be in the phrase that God himself useth touching many great Feasts, viz. *Omne servile Opus non facietis in iis*, yet it is not in that wherein he instituteth the seventh Day to be the Sabbath, *Non facies omne Opus in eo*, without *servile*, Thou shalt do no manner of Work therein. Now the Act of Judicature, and of hearing and determining Controversies is not *Opus servile*, but *honoratum & plane Regium*, and so not within the prohibition of this our Canon; which being the latter seemeth to qualify all the former. Yea the Canonists and Casuists themselves not only expound *Opus servile* of corporal and mechanick Labour, but admit twenty six several Cases, where (even in that very kind) Dispensation lieth against the Canons; and by much more Reason then, with this in Question. It may be said that this Canon consequently giveth Liberty to hold Plea and Courts, upon other Festivals in the Vacations. I confess that so it seemeth; but this Canon hath no Power to alter the bounds and course of the Terms, which before were settled by the Statutes of the Land, so that in that point it wrought nothing.

Why they
sit on Ro-
gation-
Days.

But here ariseth another Question, how it chanceth that the Courts sit in *Easter-Term* upon the *Rogation-days*, it being expressly forbidden by the Council of *Medard*, and by the intention of divers other Constitutions? It

^a *Pat. 5. R. 2. part 2. m. 12.* ^b *13. Edw. I. ca 30.* ^c *An. 5. & 6. Edw. 6. cap. 3.* ^d *Tabien. v. Feria. 5. 10.* ^e *Tit. de Feriis, ca. Conquestus.* ^f *Lev. xxiii. 21, 25.* ^g *Exod. xx. 10. Item Lev. xxiii. 3.*

seemeth

leemeth that it was never so used in England; or at least not for many Ages; especially since Gregory IX. inſomuch that among the Days wherein he prohibiteth *Foreſenſum Strepitum*; clamorous pleading, &c. he nameth them not. And tho' he did; yet the Gloſſographers ſay, that a Nation may by Cuſtom erect a Feaſt that is not commanded by the Canons of the Church. * *Et eodem modo poſſet ex conſuetudine introduci, quod aliqua qua ſunt de Præcepto non eſſent de Præcepto, ſicut de tribus Diebus Rogationum, &c.* To be ſhort, I find no ſuch Priviledge for them in our Courts; as that they ſhould be exempt from ſuits; tho' we admit them other Church Rites and Ceremonies.

We muſt now (if we can) ſhew why the Courts, ſitting upon ſo many Ferial and Holy-days, do forbear to ſit upon ſome others, which before I mention'd; the *Purification, Aſcenſion, St. John Baptiſt, All-Saints, &c.* For in the Synod under *Iſlepe* before mention'd, no prerogative is given to them above the reſt, that fall in the Terms; as namely, *St. Mark and St. Philip and Jacob*, when they do fall in *Eaſter-Term*, *St. Peter* in *Trinity-Term*, * *St. Luke* and *SS. Simeon and Jude* in *Michaelmas-Term*. It may be ſaid, that, although the Synod did not only prohibit *Opera ſervilia* to be done on Feſtival-days, as the Offence moſt in uſe at that time; yet did it not give Licence to do any Act that was formerly prohibited by any Law or Canon. And therefore if by colour thereof, or any former uſe (which is like enough) the Courts did ſit on leſſer Feſtivals, yet they never did it on the greater, among which as *majoris Cautela gratia*, thoſe *Opera ſervilia* are there alſo prohibited to be done on *Eaſter-day, Pentecoſt*, and the Sunday it ſelf.

Let us then ſee which are the greater Feaſts, and by what merit they obtain the Priviledge, that the Courts of Juſtice ſit not on them. As for Sunday, we ſhall not need to ſpeak of it, being canonized by God himſelf. As for *Eaſter* and *Whitſunday*, they fall not in the Terms: yet I find a Parliament held, or at leaſt begun on *Whitſunday*. But touching Feaſts in general, it is to be underſtood, that the Canonists, and ſuch as write * *De Divinis Officiis*, divide them into three Sorts, viz. *Feſta in totum Duplicita, ſimpliſſime Duplicita & Semiduplicita*. And they call them *Duplicia*, or double Feaſts, for that all, or ſome Parts of the Service on thoſe Days were begun *Voce Duplici*, that is, by two Singing-men; whereas on other Days all was done by one. Our Cathedral Churches do yet obſerve it: I mean not to ſtay upon it: look the * *Rationale*; which Feaſts were of every of theſe kinds. The ordinary Apoſtles were of the laſt, and therefore our Courts made bold with them: But the *Purification, Aſcenſion, St. John Baptiſt*, with ſome others that fall not in the Term, were of the firſt; and becauſe of this and ſome other Prerogatives were alſo called *Feſta Majora, Feſta Principalia, & Dies novem Lectionum*, ordinarily, double Feaſts, and grand Days. Mention is made of them in an ^d Ordinance 8. *Edw. III.* That Writs were ordained to the Biſhops, to accuſe all and every of the Perturbers of the Church, &c. every Sunday and double Feaſt, &c. But we muſt needs ſhew why they were called *Dies novem Lectionum*; for ſo our old *Pica de Sarum* ſtyleth them, and therein lyeth their greateſt Priviledge. After the *Arian* Heresie againſt the *Trinity*, was by the Fathers of that time moſt powerfully confuted and ſuppreſſed, the Church in Memory of that moſt bleſſed Victory, and for better eſta bliſhing of the Orthodox Faith in that point, did ordain, that upon divers Feſtival-days in the Year, a particular Leſſon touching the Nature of the *Trinity*, beſides the other eight, ſhould be read in their Service, with rejoycing and thankſgiving to God for ſuppreſſing that horrible Heresie: And for the greater ſolemnity, ſome * Biſhop, or the chiefeſt Clergy-Man preſent, did perform that Duty. Thus came theſe Days to their ſtyles afore-

Why on ſome Feſtivals, and not on others.

* Before the abbreviation, 16 Car. 1.

The Difference of Feſtivals.

* Tabien. FERIA 5. 10. b Durandi lib. 7. c. 1. n. 31. c Durandi lib. 7. ca. 1. d Raſſ. Excom. 5. e Beletus Explicat. ca. 158.

said, and to be honoured with extraordinary Musick, Church-service, Robes, Apparel, Feasting, &c. with a particular Exemption from Law-Tryals, amongst the Normans, who therefore kept them the more religiously here in England: *Festa enim Trinitatis* (saith Beletbus) *significat Cuius sunt celebranda.*

Grand
Days in
France.

In France they have two sorts of Grand Days, both differing from ours: First, they call them, *Les Grand Jours*, wherein an extraordinary Sessions is holden in any Circuit, by virtue of the King's Commission directed to certain Judges of Parliament. Secondly, those in which the Peers of France hold once or twice a Year their Courts of *Haute Justice*; all other Courts being in the mean time silent. See touching these, *Loyseau De Seigneurs*.

Grand
Days in
England.

To come back to England, and our Grand Days, I see some difference in accounting of them: *Durandus* in the first Chapter of his seventh Book, reckoneth the *Purification*, *Ascension* and *St. John Baptist* to be Grand Days, not mentioning *All-Saints*; but both he in his 34th Chapter, and *Beletbus* in his — do call it *Festum Maximum & Generale*, being not only the Feast of Apostles and Martyrs, but of the Trinity, Angels and Confessors, as *Durandus* termeth it. And that Honour therefore, and Duty, *quod in singulis valet, potentius valet in conjunctis*. As for the Feast of *All-Saints*, neither *Durandus* nor *Beletbus*, nor any Ancient of those Times (for they lived almost 400 Years since) do record it for a Festival. But our Country-man *Walsingham* the Monk of *St. Albans* saith, that *Simon* Arch-bishop of *Canterbury* in the Year 1328. at a Provincial Council holden at *London*, did ordain, *Quod die Parasceue & in Commemoratione Omnium Animarum ab omni servili opere cessaretur*. Surely he mistook it; for neither is it so mention'd in *Lindewood*, reciting that Canon, nor in the ancient Copy of the Council it self, where the two Feasts canonized by him are the *Parasceue* and the Conception of the *Blessed Virgin*. Yet doubtless, whensoever it was instituted it was a great Feast with us, tho' no where else. For the old *Breviarium Eboracensis Ecclesie* doth not only set it down in the Kalendar for a double Feast, but appointeth after, the whole Service, with the nine Lessons for it, as a Feast of the Trinity. And though neither the Statute of *Edward VI* nor our Church at this day do receive it; yet being formerly a Vacation-day (as it seemeth) our Judges still forbear to sit upon it, as not hitherto made a Day in Courts, tho' depriv'd of Festival Rites, and therefore neither graced with Robes nor Feasting.

The Feast
of St. Peter
and St.
Paul.

The Feast also of *St. Peter* and *Paul* on the 29th of June was a double Feast; yet it is now become single, and our Judges sit upon it. I confess I have not found the Reason, unless that by Decanonizing *St. Paul*, and so leaving *St. Peter* single, we allow him no Prerogative above the other Apostles, lest it should give colour for his Primacy; for to *St. Paul*, as one born out of time, we allow no Festival, either in the Statute of *Edward VI* or in the Almanacks and Kalendars of our Church. And why *St. Peter* hath it not, is the more observable, for that he not only is deprived of the ancient Rights of his Apostleship, contrary to the Canons (as the other are); but also of the Privilege given him in that place by *Pope Nicolas II*. in a Bull to *Edward* the Confessor; and being Patron of the Paroche and Dedication of *Westminster*, where the Terms are kept, and where by the Right of his Day he was also privileged from Court Business.

Other Festivals I enquire not after, as of *St. Dunstons* and the rest that stand rubricate in old Kalendars; they being either abrogated by old Canons of our own Church, or the Statute of *Edward VI*, whereof I must note by the way, that I find it repealed by *Queen Mary*, but not revived by *Queen Elizabeth*, or since.

I am

* It seemeth that the Statute of 4. and 6. of *Edw. VI*: Cap. 3. notwithstanding the Repeal of it amongst a Multitude of others by *Queen Mary*, Anno 1. Session 2. Cap. 2. is revived again, the 1st year of *Queen Elizabeth*.

I am carried from the brevity I intended, yet all this lyeth in my way; ^{St. George's Day.} nor is it out of it to speak a word of St. George's day, which sometimes falleth in *Easter-Term*, and is kept in the Court Royal with great Solemnity; but not in the Courts Judicial. Tho' he stood before in the Kalendar; and was the *Engliss* Patron of elder time; yet *H. Chicheley* Arch-bishop of *Canterbury* gave him his greatness, by Canonizing his Day to be as a double Feast and Grand day, as well among the Clergy as Laity; and that both the one and other repairing to their Churches should celebrate it (as Christmas-day) free from Service-work; in ardent Prayers for safety of the King and Kingdom. The Occasion of this Constitution was, to excite King *Henry* the V. being upon his Expedition for *Normandy*; and tho' this, among other holy-days, was abolished by the Statute 5. and 6. of *Edw.* 6. yet it being the Festival of the Knights of the Garter, it was provided in the Statute, *That the Knights might celebrate it on the 22^d, 23^d, and 24th of April.* Other Feasts there were of this Nature; as that of St. *Wenefred* on the second of *November*, which is in effect no Day of sitting, but applied to the pricking of Sheriffs.

These are vanished, and in their room we have one new memorable Day of intermitting Court and Law business for a little in the Morning, whilst the Judges in their Robes go solemnly to the great Church at *Westminster* on the fifth of *November* yearly, to give God thanks for our great delivery from the *Powder-Treason*; and hear a Sermon touching it; which done, they return to their Benches. The Institution hereof is by Act of Parliament *Jacobi*, and it is of the kind of those Ferial days, which being ordained by the Emperours; not by the Popes; are in Canon or Civil Law called *Dies Feriati repentini*. I will go no farther among the tedious Subtilties of distinguishing of Days; I have not been matriculated in the Court of *Rome*: And I confess I neither do nor can explain many Objections and Contrarities that may be gathered in these passages. Some *Oedipus* or *Ariadne* must help me out.

CHAP. III.

Why some Law business may be done on Days exempted.

IN the mean time let us see, why some Law business may be done on Days exempted, and sometimes on *Sunday* it self, notwithstanding any thing before mentioned.

For as in Term-time some Days are exempted from Term business, and some Portion of the Day from sitting in Courts; so in the Vacation-Time and Days exempted, some Law business may be performed by express permission of the Canon Law, according to that of the Poet in the *Georgicks*,

*Quippe etiam Festis quodam exercere Diebus
Læs & Jura sinunt*

The Synod of *Medard* admitteth matters *de Pace & Concordia*, to be dispatched both on Holy-days and on *Sunday* it self: the Laws of *Hen. I.* matters of Concord and doing Fealty to the Lord: the decree of *Gregory IX.* Cases of Necessity and doing Piety; according to that of *Prasper*,

Elizabeth, per by 1. Jacobi Cap. 25. In these words; That an Act made in the first Year of the Reign of Queen Mary, intituled, an Act for the repeal of certain Statutes made in the time of King Edw. VI. shall stand repealed. See Poulton coo.

* Virgil, Georg. lib. 1. v. 268. † Lib. Ep.

Non

Non recto servat legalia Sabbata Cultu,

Qui Pietatis Opus credit in his vetitum.

The rule is verified by our Saviour's healing on the Sabbath. Out of these and such other Authorities of the Laws Ecclesiastical and Civil, cited in the *Glosses*, the Canonists have collected these Cases, wherein Judges may proceed legally upon the Days prohibited, or do the things herein following.

For matters of Peace and Concord, by reason whereof our Judges take the acknowledgment of *Fines, Statutes, Recognizances, &c.* upon any Day, even the *Sabbath-day* (tho' it were better then forbore, if Necessity require it not.)

For suppressing of Traitors, Thieves, and notorious Offenders, which may otherwise trouble the Peace of the Common-wealth, and endanger the Kingdom.

For manumission of Bond-men: a Work of Piety.

For saving that which otherwise would perish: a Work of Necessity.

For doing that, which time overslipt, cannot be done: As for making Appeals within the time limited, &c.

For taking the Benefit of a Witness that otherwise would be lost, as by *Death or Departure*.

For making the Son *sui Juris*: as if, amongst us, the Lord should discharge his Ward of Wardship. All which are expressed in these Verses:

*Hæc faciunt Causas Festis tractare Diebus,
Pax, Scelus admissum, Manumissio, Res peritura,
Terminus expirans, mora Testis abesse volentis,
Cumque Potestatis Patrie Jus Filius exit.*

Or thus according to *Panormitanus; Ratione Appellationis, Pacis, Necessitatis, Celeritatis, Pietatis, Matrimonii, Latrocinii, & ubicunque in mora promptum est Periculum*. So likewise by consent of Parties upon *Dies Feriati minus solennes*, viz. Harvest, Hay-seed, &c. as we have said before. And divers others there are, whereof see the *Glosses in Gratian*, and in the Chapter *Conquestus*; but especially the Title *De Feriis & Dilationibus in ff.* from whence most of the premisses are deduc'd; and where also, by a Constitution of *Trajan*, military Business may be done *in Diebus Feriis*, and at all times. *Rescriptum* (saith the Law) *Ferias tantum à forensibus Negotiis dare Vacationem; ea tamen quæ ad Disciplinam militarem pertinerent, esse Feriatis Diebus peragenda*. Upon these Reasons, the Admiral-Court is always open; for that strangers and Merchants and sea-faring-men, must take the Opportunity of Tides and of Winds, and other Necessities; and cannot without ruine or great Prejudice attend the Solemnity of Courts and dilatory Pleadings.

The Marshal's Court also for military Matters, falleth within the Privilege granted by *Trajan*: yet hath it observ'd, as near as conveniently it may, the Canons of the Church; as forbearing to assign Battel in *Quadragesima & temporibus prohibitis*. And so lately in the Case between the *Lo. Raye* and *Mr. Ramesey*.

So likewise the Chancery, being a Court of Piety, is said to be always open: but I take this to be understood as it is *Officina Brevium* and *Consistorium Equi & Boni*; not where it is *Prætorium Juris communis*, and proceedeth in course of the common Law.

As for the *Star-chamber*, it is in lieu of that which was in ancient time the *Counsel-chamber*, and *Specula Regni*, the watch-tower of the Kingdom: where the Barons and other of the King's Counsel us'd to meet *ad prospiciendam fovendamque Remp.* to discover, prevent, and suppress all Dangers and

^a *Conc. Medard. Can. 22. q. 5. ca. 17.* ^b *Can. 15. q. 4.* ^c *Can. 3. lib. 2. Tit. 12.* ^d *Ibid. L. Div. Trajanus.*
enormities

enormities occurrent, and to provide for the safety and good of the Kingdom. It was necessary therefore that this Session should not only be daily open, but (as is said of the House of Commons) *Nocte dieque patens*; for an Evil may happen in the Night, that would be too late to prevent in the Morning. And therefore the Statute of 3. Henr. VII. and 21. Henr. VIII. enlarging the Jurisdiction hereof, do not circumscribe it either with Term-time or Days of Sitting.

CHAP. IV.

Why the End of Michaelmas-Term is sometimes holden in Advent; and of Hilary, in Septuagesima, &c.

BUT the Terms sometimes extend themselves into the Days of the Church which we call Vacation; as when *Advent-Sunday* chanceth on the 27th of November, then *Michaelmas-Term* borroweth the Day after out of *Advent*; and when *Septuagesima* followeth suddenly upon the Purification, *Hilary-Term* not only usurpeth upon it and *Sexagesima*, (which by the Precedent of the Church of Rome here before mention'd it may do) but also upon *Quinquagesima*, *Ash-wednesday*, and *Quadragesima* it self; for all which there is matter enough in one place or other already shewn. Yet it is farther countenanced by the Statute of 3. Edw. I. cap. 48. where it is thus provided: *Forasmuch as it is great Charity to do right unto all Men at all times (when need shall be;) by Assent of all the Prelates it was provided, that Assizes of Novel Disseisin, Mordauncester, and Darraign Presentment, should be taken in Advent, Septuagesima and Lent, even as well as Inquests may be taken, and that at the special Request of the King made unto the Bishops.* Where it is to be noted, that Inquisitions might be taken before this Statute within the Days prohibited, or Church-time, and that this Licence extended but to the Particularities therein mentioned.

CHAP. V.

Why Assizes be holden in Lent.

IT seemeth, that by virtue of this Statute, or some other particular Dispensation from the Bishops, Assizes began first to be holden in Lent, contrary to the Canons. I find in an ancient Manuscript of the Monastery of St. Albans a Dispensation of this kind, thus entituled:

Licentia concess. Justic. Reg. de Assis. tenend. sacro tempore non obstante. Pateat universis per presentes nos Ricardum (miseratione divina) Abbatem Monasterii Sancti Albani, Licentiam & Potestatem auctoritate presentium dedisse dilecto nobis in Christo Domino Johanni Shardlow & Sociis suis Justic. Dom. Regis, Assisas apud Barnet (nostra Jurisdictionis exempta) die Lune proximo ante Festum S. Ambrosii capiendi juxta Formam, Vim, & Effectum Brevis Domini Regis inde iis directi. In cujus, &c. Anno Domini, &c. Sub Magno Sigillo.

^a Metam. lib. 12. ^b H. 7. ca. 1. 23. H. 8. ca. 29. ^c Anno 1027. & 1199. Hoveden, p. 663. Whether

habeat, si in alia Schira sit, 15 dierum terminum habeat; & si in tertio Comitatu sit, 3 Hebdomade; si in quarto, quarta Hebdomada; & ultra non procedit ubicunque fuerit in Anglia, nisi competens causa detineat * Soinius; si ultra Mare est 6 Hebdomadas habeat & unum Diem ad accessum * Sonius. & recessum Maris, nisi vel Occupatio Servitii Regis, vel ipsius Aegritudo, vel Tempestas, vel competens aliquod amplius respectet.

The Statute of * Marlebridge cap. 12 foundeth to this purpose: In Assisis autem ultime Presentationis & in Placito Quare Impedit de Ecclesiis vacantibus, dentur Dies de Quindena in Quindenam, vel de tribus Septimanis in tres Septimanas, prout locus fuerit propinquus vel remotus. And again, Cap. 26. Sed si vocatus, &c. (ad Warantum coram Justiciariis Itinerantibus) fuerit infra Comitatum, tunc injungatur Vicecomiti, quod ipsum infra tertium Diem vel quartum (secundum Locorum distantiam) faciat venire, sicut in Itinere Justiciarum fieri consuevit. Et si extra Comitatum maneat, tunc rationabilem habeat Summonitionem 15 dierum ad minus secundum Discretionem Justiciarum. & Legem Communem.

There was also another use of Returns, as appeareth by the Reformed Customary of Normandy, Artic. the 10th. Some of them belonged to Pleas of Goods, and Chattels, which we call personal Actions, as those of *Ostab*. Some to Pleas of Land, and real Actions, as those of *Quindena*. Pleas of Goods and Chattels were holden from *Ostabis* to *Ostabis*; Pleas of Land not sooner than from *Quindena* to *Quindena*. *Nul n'est tenu de respondere de son Heretage en moindre tems que de quinzaine in quinzaine*. The more solemn Actions had the more solemn Returns, as we see by the Stat. of *Dies communes in Banco*, which I leave to my Masters of the Law.

I will not speak of the Returns particularly, more than that *Ostab*. is sometimes reckon'd by seven Days, sometimes by eight; by seven Days, excluding the Feast from which it is counted; by eight, including it. And the Word is borrowed from the Constitutions of the Church, where the seven Days following *Easter* were appointed to be Ferial-days (as we have shewed before) in imitation of the seven Days *Azymorum*, following the Passover in the Levitical Law. But in this manner *Ostab. Trinitatis* always includeth nine Days, reckoning *Trinity-Sunday* for one, by reason the just *Ostabis* falleth on the Sunday following; which being no Day in Court, putteth off the Return till the next Day after, making Munday always taken for the *Ostab*. unless you will count these two Days for no more than one, as the Statute de *Anno Bissextili* in the like case hath ordained, the superfluous Day in the Leap-year (called *Intercalaris*) and the Day going next before, to be accounted but one Day. It is here to be noted, that although the Sundays and Grand-days be no days in Court, yet they are numbered among the Days of *Retourne*, according to the Civil Law, * *Feria autem, siue repentina siue solennes sint, dilationum temporibus non excipiantur, sed his quoque connumerentur*.

CHAP. VII.

Of the Quarta dies post.

Touching the *Quarta dies post* allowed to the Defendant for his Appearance after the Day of Return, it is derived from the ancient Saxon, *Salique*, French and German Laws, where it was ordained, that the Plain-

* 51. Henr. III. cap. 13. * 51. Henr. III. * *Ord. de dilation. l. frus Paris fol. 133.*

tiff should *per triduum seu amplius Adversarium expectare, usque ad Occasum Solis* (which they called *Sol Satire*,) as appeareth abundantly in their Laws, and in the *Formular* of *Marculfus*, and *Bignonius's* notes upon the same. To which also may be added that which occurreth in *Gratian* Cap. 2. q. 6. *Biduum vel Triduum*. But the original proceedeth from the ancient Custom of the Germans mentioned by *Tacitus*; * *Illud ex Libertate Vitium quod non simul nec jussi conveniunt, sed & alter & tertius Dies cunctatione coeuntium absuntur*. He saith, *ex libertate*, because that to come at a peremptory time was a note of Servitude, which the Germans despised. It is very observable, that King *Edw. III.* calling a Great Council in the fifteenth Year of his Reign, wherein were assembled divers Bishops and twenty two Earls and Abbots; he appointeth them by his Writ of Summons to meet at London, *Die Mercurii proximo post Festum Translationis S. Thomæ Martyris proxime futura—vel saltem infra tres Dies ex tunc immediate sequentes ad ultimam*. The Writ carrieth the form, phrase, and style of a Parliament-Writ; but in this point of *triduum post* differeth from all others that I have seen. Hear the Writ it self:

Rex Ven. in Christo R. eadem gratia Bathon. & Wellens. Episcopo Salutem. Quia super quibusdam arduis & urgentibus Negotiis Nos & Statum Regni nostri Angliæ contigerit vobiscum, & cum aliis Prælat. ac Magnatibus dicti Regni Die Mercurii proximo post Festum Translationis Sancti Thomæ Martyris proxime futura apud London Colloquium habere & Tractatum: Vobis in Fide & Dilectione, quibus nobis tenemini, mandamus firmiter injungentes, quod quibuscunque Actionibus cessantibus, dictis Die & Loco, vel saltem infra tres Dies ex tunc immediate sequent. ad ultimam personaliter intersitis nobiscum, & cum dictis Prælati & Magnatibus super Negotiis prædictis tractaturi, vestrumque Consilium impensuri. Et hoc, sicut Nos & Honorem nostrum ac Jurium & dicti Regni nostri Commodum diligitis, nullo modo omittatis, Teste Rege apud Turrim London. XII. die Junii.

Per ipsum Regem.

¶ *Vide plus de Returnis, LL. H. II. cap. 59.*

CHAP. VIII.

Why I have used so much Canon and Foreign Law in this Discourse, with an excursion into the Original of our Law.

I Have used much Canon and some other Foreign Law in this Discourse, yet, I take it, not impertinently; for as these Western Nations are, for the most Part deduced from the Germans, so in ancient times there was a great *isovopia* and affinity in their Laws:

—*Facies non omnibus una,
Nec diversa tamen, qualem decet esse Sororum.*

They that look into the Laws of our English Saxons, of the *Saliques*, *French*, *Almayns*, *Ripurians*, *Bavarians*, *Longobards*, and other German Nations, about 800 Years since, shall easily find it. Out of them, and other Manners Rites and Customs of the Saxons and Germans is the first Part and Foundation of our Laws, commonly called the Laws of *Edward the Confessor*, and Common Law. Two other principal Parts (as from two Pole-Stars) take their

their direction from the Canon Law and the Law of our brethren the *Longobards* (descending of *Saxon* lineage as well as we) called otherwise the Feodal Law, received generally through all *Europe*. For in matters concerning the Church and Church-men, Advowsons, Patronage, Presentations, Legitimation, Matrimony, Wills, Testaments, Adultery, Defamation, Oaths, Perjury, Days of Law, Days of Vacation, Wager of Law, and many other things, it proceeded, sometimes wholly, sometimes for the greater Part, by the rules and precepts of the Canon Law. And in matters touching Inheritance, Fees, Tenures by Knights-service, Rents, Services, Wards, Marriage of Wards, Reliefs, Treason, Pleas of the Crown, Escheats, Dower of the third Part, Aids, Fines, Felony, Forfeiture, Tryal by Battel, Essoine, Warrantie, &c. from the Feodal Law chiefly; as those that read the Books of those Laws collected by *Osbertus* and *Gerardus* may see apparently. Tho' we and divers other Nations (according as befitte every one in their particular respects) do in many things vary from them, which *Osbertus* confesseth to be requisite, and to happen often among the *Longobards* themselves. I do marvel many times, that my Lord *Cooke*, adorning our Law with so many flowers of Antiquity and foreign Learning; hath not (as I suppose) turned aside into this field, from whence so many roots of our Law, have of old been taken and transplanted. I wish some worthy Lawyer would read them diligently, and shew the several Heads from whence these of ours are taken. They beyond the Seas are not only diligent but very curious in this kind; but we are all for Profit and *Lucrando pane*, taking what we find at Market, without enquiring whence it came.

Another great Portion of our Common Law is derived from the Civil Law, (unless we will say that the Civil Law is derived from ours.) Dr. *Cowell*, who hath learnedly travelled in comparing and paralleling of them, affirmeth, that no Law of any Christian Nation whatsoever, approacheth nearer to the Civil Law than this of ours. (His meaning is no *Municipal Law*.) Yet he saith that all of them *generali hujus Discipline Equitate temperantur, & quasi condiuntur*. Had he not said it, his Book it self, entituled *Institutiones Juris Anglicani ad methodum & seriem Institutionum Imperialium compositae & digestae*, would demonstrate it: which *Bracton* also above 300 Years before right well understanding, not only citeth the Digests and Books of Civil Law in many Places for warrant of our common Law, but in handling our Law pursueth the Method, Phrase, and Matter of *Justinian's Institutes* of Civil Law.

When and how these several Parts were brought into our Common Law, is neither easily nor definitively to be expressed. Those no doubt of Canon Law, by the prevalency of the Clergy in their several Ages: those of the Feodal by military Princes, at, and shortly after the Conquest: And those of Civil Law, by such of our Reverend Judges and Sages of ancient time, as for Justice and Knowledge sake sought instruction thence, when they found no rule at home to guide their Judgments by. For I suppose they in those Days judged many things, *ex aequo & bono*, and that their Judgments after (as *Responsa Prudentium* among the *Romans*, and the *Codex Theodosianus*) became Precedents of Law unto Posterity.

As for the Parts given unto Common Law out of the Constitutions of our Kings since the Conquest, and before *Magna Charta*; I refer them (as they properly belong) to our Statute Law, tho' our Lawyers do reckon them ordinarily for Common Law.

Among these various Heads of our Law, I deduce none from the *Scots*; yet must I confess that if those Laws of theirs, which they ascribe to *Malcolm*, the Second, who lived about sixty Years before the Conquest, be of that antiquity, (which I cannot but question) and that our Book called *Glanvil* be wholly in effect and *verbatim* for the greatest Part taken out of the Book

of their Law, called *Regiam Majestatem*; for they pretend that to be older than our *Glanvil*; I must (I say) ingenuously confess, that the greatest Part or Portion of our Law is come from *Scotland*, which none I think will deny either in Story or Antiquities will or can admit.

To come therefore to the point, if my Opinion be any thing, I think the Foundation of our Law to be laid by our German Ancestors, but built upon and polished by Materials taken from the Canon Law and Civil Law. And under the capacious Name of *German*, I not only intend our *Saxons*; but the ancient *French* and *Saliques*; not excluding from that Fraternity the *Cimbrian* Nations, i.e. the *Norwegians*, *Danes*, and *Normans*. And let it not more mislike us to take our Laws from the noble *German*, a prime and most potent People, than it did the conquering *Romans* theirs from *Greeks*, or the learned *Grecians* theirs from the *Aethiops*.

Part of this Paragraph seems to be crossed out in the Original; but without it the Connection cannot be made good.

It is not credible that the *Britains* should be the Authors of them; or that their Laws, after so many Transmutations of People and Government, but especially after the Expulsion (in a manner) of their Nation, or at least of their Nobility, Gentry and Free-men, the abolishing of their Language, and the Cessation of all Commerce with them, and an hereditary Hostility settled between these Nations; that after all this (I say) they should remain or be taken up by the conquering Enemy, who scarcely suffered one Town in a County to be called as they named it, or one *British* Word almost; (that I yet have learned) to creep into their Language. Admit that much of their fervile and base People remained behind them, pleased perhaps as well with their new Lords as with their old; can we think that the *Saxons* should take either Laws or Manners, or Form of Government, from these base and servile People? I would not blemish the least Feather of the *British* Honour; but I must follow the Truth, tho' it rub upon the Apple of their Eye. What I have said, appeareth not only by *Bede* (*Lib. i. cap. 15.*) but by their own Historians. *Bede* having spoken of their most miserable Extirpation throughout the whole Land, saith, *Itaque nonnulli de miserandis reliquiis*. And the chiefest Monument of *British* Antiquity, (written in the *British* Tongue, and brought about 500 Years since out of *Britannia Armorica* by *Walter* Arch-deacon of *Oxford*, and in those Days translated into *Latin* by *Monumethensis*) doth report, that in the Days of *Cadwallader* the Land was so afflicted with Discord, Sloth, Pestilence and Famine, that *Miseræ* (*Britannorum*) *reliquiæ patriam, factis agminibus, diffugientes, transmarinas petebant Regiones, cum Ululatu magno sub Veterum Funibus hoc modo cantantes: Dedisti nos tanquam Oves Escarum, & in Gentibus dispersisti nos, &c.* *Psal. xliii. 13.* And *Cadwallader* himself there complaineth, fleeing into *Armorica*, whence he never returned, *Incumbit [divinæ] ultio, erga potestatis ultio, quæ nos ex natali Solo extirpat; quos nec olim Romani, nec deinde Scotti, vel Picti, nec versute Proditiones exterminare quiverunt.* And the Author going on, sheweth, that the Land was so universally destitute of *British* Inhabitants, that the *Saxons* (which were already seated here) inform'd their Country-men beyond Seas of those desolate Territories, inviting them to come and possess them. *Quod cum ipsis indicatum fuisset* (saith the Author) *nefandus Populus ille, collecta innumerabili Multitudine Virorum & Mulierum, applicuit in partibus Northanhumbriæ, & desolatas Provincias ab Albania (i.e. Scotia) usque ad Cornubiam (Cornwall) inhabitavit. Non enim aderat habitator qui prohiberet, præter pauperulas Britonum reliquias, quæ superfuerant, quæ infra abdita Nemorum in Gualis commanebant. Ab illo tempore, Potestas Britonum in Insula cessavit, & Angli regnare ceperunt.* Their History of *Cambria* (written also in their own *Welsh* Language, about 250 Years since; and translated into *English* by their Countryman and greatest Antiquary *Humph. Lloyd*), doth acknowledge, that after *Cadwallader's* Departure, there remain'd none of his Nation,

* Here is this Note in the Margin of the Original: that the Saxons, abjecto Dominio Britonum, jam totæ Loegria imperaverunt. Ca. penult.

Nation, but certain poor *Britains* that liv'd by Roots in Rocks and Woods. And that the *Saxons*, *Angles*, and *Jutes* (that is to say, *Goths*) being then call'd in by such of their Countrymen that were there before, did come in great Numbers; and dividing this Land into divers Territories and Kingdoms, did inhabit all the Cities, Towns, Castles, and Villages, which the *Britains* had builded, ruled, and inhabited, by the space of 1827 Years. Let the Reader now judge, whether it be likely, that the scrupulous Nation of the *Saxons* either did, or could by any probable means take any Laws from the poor Reliques of the *Britains*.

* When the *Romans* conquer'd this Land, they neither remov'd the Inhabitants, nor brought any Foreigners upon them, other than (to govern and keep them in obedience) some Legions of Souldiers and small Colonies. Yet that they made an Alteration of their Laws, we may see in the Scripture by the Example of *Judea*. For tho' *Pompey* obtained the Kingdom there, rather by the Confederacy with *Hyrcanus*, than by Right of Conquest; (and therefore suffer'd them to enjoy their Rites of Religion, with the Liberties of most of their Cities;) yet it being reduced into a Province (as this of ours was) their Laws were so changed, as by their own Confession, *John xviii. 31. It was not lawful for them to put any Man to death.* Therefore our Saviour and the two Thieves were judg'd, and suffer'd upon the Cross after the *Roman* manner, not according to the Laws of the *Jews*, (for their Law never inflict'd the Cross upon any Offender) and the Punishment of Blasphemy wherewith they charg'd *Christ*, was Stoning; (In which course, they once in a fury were about to put him to death, *John x. 31.*) And the Punishment of Theft, a Quadruple Restitution, or Bondage in default thereof. As for the Stoning of *Stephen*, it was not judicial but tumultuous, an Act of Fury, and against Law: In which course they meant also to have murder'd *St. Paul*, had not *Lyfias* prevented them, by sending him to his legal Tryal, *Cesar's* Judgment Seat. Wherein it is further to be observ'd, that even then, Offences committed about the very Judicial Law, and Religion it self, was also under the cognizance of the *Roman* Judge. For even that self-same Cause, wherein *Paul* stood accus'd before *Festus* (as *Festus* himself reporteth it) *Acts xxv. 19.* [was] touching Questions of their own Religion.

By this we may conceive, how the *Romans* dealt with the *Britains* touching their Laws; and the Story of *St. Alban* and *St. Amphibalus* somewhat sheweth it: Where, according to the *Roman* manner, *St. Alban* was convened before the *Roman* Judge by Souldiers, not by Civil Officers, and before his Execution whipp'd (as *Pilate* us'd our Saviour) and then deliver'd to the Souldiers to be beheaded. *Bed. lib. i. cap. 7.*

* But what Laws soever the *Romans* us'd in *Britain*, the *Saxons* doubtless swept them all away with the *British* Nation. Otherwise than that in composing

* In the Original this Paragraph seems to be cross'd out; for what reason I know not.

* Our Author has left us another Account, How far the *Britains* and *Saxons* made use of the *Roman* Laws, which we find in the printed Copy. It is also in the original MS. tho' cross'd out, and that which we have printed put in its place. But notwithstanding it appears that he designed this, as his last Thoughts, for the Text; yet the other is of more moment than to be omitted. It is thus: "By this we may conceive how the *Romans* dealt with the *Britains* touching their Laws, and the Story of *St. Alban* and *Amphibalus* somewhat sheweth it. But more plainly, *Seneca* speaking of *Claudius* the Emperor having conquer'd this Island:

— Jussit & ipsum
Nova Romanæ
Jura securis
Tremere Oceanum.

In Ocean Isle new Laws he set,
That from the Roman Ax were set.

And more plainly yet *Herodianus* (in *Severo*, p. 250.) speaking of *Severus* the Emperor's going out of this Island: He left (saith he) behind him, in the part of the Island subject to the *Romans*, his youngest Son

posing Laws for the Government of their People; after they had receiv'd Christianity from the Roman Clergy; they might perhaps (by their Advice) take somewhat also from the Roman Law. Which Bede seemeth to avouch, lib. 2. cap. 5. speaking of the Acts of Ethelbert the first Christian Saxon King: *Qui inter cetera bona quæ Genti suæ conferebat; etiam Decreta illi Judiciorum, juxta exempla Romanorum, cum Consilio Sapientum constituit.* What Bede meant by the Words *juxta Exemplum Romanorum*, is not perspicuous. As, whether his Meaning was, that he made positive Decrees, as the Romans had done, for the government of his People? Or, that in making his Decrees, he took the Sum and manner of them from the Romans? This Doubt we shall easily resolve, by that which followeth in Bede himself: *Quæ (Decreta) conscripta Anglorum sermone, hætenus habentur & observantur ab ea. In quibus primitus posuit, qualiter id emendare deberet, qui aliquid rerum vel Ecclesiæ vel Episcopi, vel reliquorum Ordinum, Furto auferret; volens scilicet tuitionem eis, quos & quorum Doctrinam susceperat, præstare.* And to say truth, this that Bede here doth mention touching the Protection of the Clergy, is the chiefest matter in them that he taketh from the Romans, as namely; from their Canons, not from their Civil Law. For the secular part of those his Decrees differ far from those of the Romans, as by the Saxon Copy of them (which I my self have to shew) appeareth plainly. But to conclude this point; whatsoever in them savoureth of the Roman Law, be it Canon or Civil, it doubtless was inserted by his Roman Clergy, being then a principal part of the King's Council, (as the Clergy was afterward in all Ages.) And of them chiefly, I suppose that to be meant which Bede mentioneth, *Cum Consilio Sapientum constituit.* We find among the Saxons, the Example and the Reason why our Common Law was *vôu@. ægæp@*, an unwritten Law. They were originally a Grecian Colony coming out of Lacedæmon and the Territory of Sparta; where Lycurgus being sometime King and Author of their Law, among other of his Decrees he named *Πῆρας*, ordained this for one, that their Laws should not be written, because he would have every Man to fix them in his Memory; and for that purpose made them short and summary, after the manner of our Maxims. This course the Saxons, and by their Example the other German Nations held for many Ages. The first of the Northern Nations that alter'd it, were the Goths; who in the *Æra* 504. i. e. the Year of Christ 466. under Euricus their King, set their Laws in writing: *Legum Instituta Scriptis habere cæperunt* * The Burgundians and Saliques a little before; but the Saxons themselves, and the Angli, Werini and Frisii are not noted to have written Law, till the time of Harald the Dane, about the Year 994. So that our Saxons here in Britain began to write some of their Laws before their Brethren of Germany.

* The Author's Name is so obscurely writ, that I cannot read it.

Son Geta, to administer Law and the Civil Affairs thereof; and some of his ancient Friends to be his Counsellors; taking his eldest Son Antoninus for his Wars against the Barbarians. In averment of all this, it appeareth by Tacitus (Annal. lib. 14. p. 231.) and Dion Cassius (c. 8. *Βυζαντινῶν ἑξαῖς*) that the Romans had here in every Colony their Curiam for Justice, and their Cruces and Patibula for execution. In the Colony of Camalodunum, saith Tacitus, was heard Fremitus in Curia; and Suetonius overcoming them, put them to patibula, ignes, cruces. *Ibid.* So that all concurrereth to the verifying of the old Verse:

Cernitis ignotos Latia sub Lege Britannos.

But what Laws soever the Romans made in Britain, the Saxons doubtless swept them all away with the Britains. There is this certain Proof of it: Antoninus made a Constitution, that all Nations under the Roman Empire should be called Romans; and when the Northern People brake into these lower Parts of Europe, and made their Habitation there, the old Inhabitants (whom they expelled not, but liv'd mingled with) were still called Romans; as we see in the ancient Laws of the Saliques, Burgundians, in Cassiodorus and others; and their Laws distinguish'd by the Title of Lex Barbara and Lex Romana. But here in Britain, after the Saxons had conquer'd, we never heard nor find any mention of Lex Romana, or of any Roman Inhabitant: Which sheweth that both it and the Laws of the Britains were expell'd and driven away together; or that of the Romans with the Romans, and that of the Britains with the Britains.

For

For tho' they reduc'd not the general Manners and Customs of their Country, whereby they liv'd and were govern'd, into a written Volume, but left them still; as *Lycurgus* his *Rhetras*, to common Memory and Tradition; yet many of their ancient Kings after they had received Christianity, put their own Constitutions into writing. So did the most ancient of them, *Ethelbert* King of *Kent* about the Year 680. if his Laws (whereof I have a MS. copy) were in his own Days put into writing. So did *Ina* King of the *West-Saxons*.

What the Laws of the *Britains* were, remains at this Day to be seen by a model of them in an ancient Manuscript under the Title of *The Laws of Hoel Dba*, (that is, *Hoel the good*;) nothing consonant to these of ours at this Day, or those of the *Saxons* in time past. But we find by the Red Book in the Exchequer, that the Laws of *Hen. I.* did so concur in many things with them of the other Nations we spake of, that sometimes he not only citeth the *Salique Law*, and the *Ripuarian* or *Belgique Law* by name, but deduceth much of the Text *verbatim* from them. And we find also a great Multitude of Words of Art, names of Offices, Officers and Ministers in our Law, common in old time to the *Germans*, *French*, *Saliques*, *Longobards*, and other Nations, as well as to our *Saxons*, *Danes*, and *Normans*; but not one to my Knowledge that riseth from the *British* tongue, nor do we retain any Law, Rite or Custom of the ancient *Britains*, which we received not from the *Saxons* or *Germans*, as used also by them of old, before they came into *Britain*.

For these few Greek Words that are found in our Law, *Chirographer* and *Protonotary*, (whereby some argue the Antiquity of our Law to be from the *Druides*, whom *Cæsar* and *Pliny* report to have used the Greek Tongue;) it is doubtless, that they are come to us from the Civil Lawyers, and the one of them being a Mongrel, half Greek and half Latin, could not descend from the *Druides*, who had neither knowledge nor use of the Latin Tongue.

They therefore that fetch our Laws from *Brutus*, *Mulmutius* the *Druides*, or any other *Brutish* or *British* Inhabitants here of old, affirming that in all the times of these several Nations, (*viz. Britains, Romans, Saxons, Danes* and *Normans*) and of their Kings, this Realm was still ruled with the self same Customs that it is now (*viz. in the time of King Henry VI.*) govern'd withall; do like them that make the *Arcadians* to be elder than the Moon, and the God *Terminus* to be so fixed on the *Capitoline-hill*, as neither Mattocks nor Spades, nor all the Power of Men nor of the other Gods, could remove him from the Place he stood in.

And thus I end.

A P P E N D I X.

Pat. 11. Hen. III. m. 13.

REX universis Patentes Literas inspecturis Salutem. Cum Venerabilis Pater S. Cant. Episcopus, auctoritate Domini Papæ & fratrum suorum, nobis Gratiam de Juramentis præstandis coram Justiciariis nostris de Præcept. nostro Itiner. ab instanti Adventu Domini usque ad Vigiliam Sancti Thomæ Apostoli, & à Principio Quadragesimæ usque ad Dominicam qua cantatur Isti sunt Dies; duntaxat in rebus subscriptis; viz. in Assisis ultimæ Præsentationis de Morte Antecessor. novæ Diss. de magna Assiza, & de Inquisitionibus quæ de Terra emergerint coram eisdem Justiciariis nostris

nostris vel per Judicium vel de Consensu pertinent: Ita quod hæc Concessio hoc Anno tantum durabit usque ad Diem Dominicam supradictam: Nos per Litteras nostras Patentes quas eidem Domino Archiepiscopo fieri fecimus, protestati sumus quod Concessio illa nobis ad præsens facta usque ad Diem Dominicam supradictam, non trahetur in consequentiam post eundem Diem. Cum igitur supplicaverimus Ven. Patri W. Archiepiscopo Eboracensi de consimili Gratia nobis concedenda de Juramentis præstandis per totam Provinciam suam usque ad Terminum prædictum: Nos per has Litteras nostras Patentes protestamur quod dictus Archiepiscopus Ebor. per totam Provinciam suam id de Juramentis præstandis (sicut prædictum est) nobis duxerit concedendum, Concessio ista ad præsens facta usque ad terminum prædictum non trahetur in consequentiam post Diem eundem. In cujus rei Testimonium eidem Domino Archiepiscopo Ebor. dedi has Litteras nostras Patentes sigillo nostro signatas. Teste meipso apud Westmonast. 11. Nov. Anno Regni nostri undecimo.

Claus. 11. H. III. m. 26.

Rex dilectis & fidelibus suis Stephano de Segrave & Roberto de Lexinton, & Sociis suis Justic. Itinerantibus in Com. Warw. Leic. Glouc. & Wigorn. Salutem. Sciatis quod Venerabilis Pater S. Cant. Archiep. Auctoritate Domini Papæ, concessit quod Juramenta præstentur coram Justiciariis nostris Itinerant. ab instanti Adventu eorum usque Vigiliam Sancti Thomæ Apostoli, & à Principio Quadragesimæ usque ad Diem Dominicam qua cantatur Isti sunt Dies, viz. in Ass. ultimæ Præsentationis de Morte Antecessor. de magna Ass. & de Inquisitionibus quæ emergerint de terris, sicut plenius nobis constitit ex inspectione Litterarum Domini Cant. quas inde vobis mittimus. Rogamus ut V. P. W. Ebor. Archiepiscopus quatenus concedens Juramenta in consimilibus Causis præstari infra Provinciam suam usque ad Præfat. Terminum, Litteras suas patentes consimiles Litteras Domini Cant. inde habere faciat. Ut autem liberius & facilius hoc velit facere, misimus Literas nostras Patentes, quales fieri fecimus Domino Cant. protestantes quod post terminum præfatum Concessio prædicta ab eo nobis facta non poterit trahi in observantiam. Vobis igitur mandamus, quod cum Archiepiscopus Ebor. hoc nobis concesserit, & Litteras suas Patentes nobis habere fecerit, Iter Justic. nostr. in Comit. qui sunt Jurisdictioni prædicti Archiepiscopi Ebor. & aliis Comit. subsint Jurisdictioni Archiepiscopi Cantuar. usque ad præfatum Terminum, si opus fuerit, continuetis solita Prudentia & Sollicitudine. Quod non dubitamus vos esse facturos Negotiis nostris expediendis ad Commodum & Honorem nostrum intendent. Dat. apud Westm. 3. Die Nov.

In custodia Franc. Bacon de Graies-Inn Armig. 1. Febr. An. 1633.

* Rogerus
de Sker-
wing.

Discreto Viro Domino Tho. Weyland Illustr. Reg. Angl. Justic. * R. miseratione divina Norwic. Episcopus Salutem & Honoris Augmentum. Cordi nobis est ut omni tempore Justitia debitum & celerem sortiatur effectum. Hinc est quod cum Ass. ultimæ Præsentationis super Ecclesiam de Kirkby Omnium Sanctorum inter Imann. quæ fuit uxor Ric. de Thwait Querentem, & Richardum le Cam Defendentem, coram vobis sit arannata, ut intelleximus, Vobis Auctoritate Præsentium permittimus quod non obstante instanti Quadragesima Assisam prædictam inter partes prædictas etiamsi Juramentum interveniat licite capiatis: Valete. Dat. apud Buketon 11. Kal. Martii, Anno Domini M. CC. LXXVI.

50. Henr.
III.

FINIS.

A
SHORT APOLOGY
FOR
ARCHBISHOP ABBOT,
Touching
The DEATH of PETER HAWKINS.
By an UNKNOWN HAND.

WITH A
LARGE ANSWER
To this APOLOGY.
By Sir HENRY SPELMAN Kt.

As also,
Several LETTERS relating to the same Fact:
With a COPY of
The DISPENSATION for IRREGULARITY,
Granted to the *Archbishop*.

And a TREATISE
Of the Original of TESTAMENTS and WILLS,
And of their PROBATS,
And to whom it anciently belonged.
By the said Sir HENRY SPELMAN Kt.

SHORT APOLOGY

FOR

ARCHBISHOP ABROT

TOWARDS

THE DEATH OF PETER HAWKINS

By an Unknown Hand

WITH A

LARGE ANSWER

To this Apology

By Sir Henry Spelman

As also

Several Letters relating to the same

With a Copy of

The Declaration for Irregularity

Given to the Bishop

And a Treatise

Of the Original of Testaments and Wills

And of their Properties

And to whom it anciently belonged

By Sir Henry Spelman

AN
A P O L O G Y
 FOR
ARCHBISHOP ABBOT,

Touching

The Death of PETER HAWKINS the Keeper,

Wounded in the Park at *Bramfil*, July 24. 1621.

1.  It is certain, that *in Foro Conscientie*, this Case may not only deservedly produce a Fear and Trembling in him who was the accidental Cause thereof; but may justly make the tallest Cedar in *Lebanon* to shake, in recounting with his inward Man, what Sin it is that hath provoked God to permit such a rare and unusual Action to fall out by his Hand: which maketh him, for the time, to be *Fabula*

Vulgi, and giveth opportunity to the Enemies of Religion of all kinds, to rejoice, to speak their pleasure; to fill their Books and Libels, within the Realm, and perhaps beyond the Seas. And that, concerning his *Calling* as well as his *Person*, not only for the present, but also in future Ages; beside Grief to his Friends, and some Scandal to the Weak, who do not rightly apprehend things, but raise Questions which few Men can resolve. To all which may be added, the Interpretation of it by his Majesty, graciously or otherwise; and the Forfeiture, that in rigorous Construction of Law may be put upon him, although held for no great Delinquent; besides the providing for a Widow and four fatherless Children: All which may pierce a Heart that is not senseless, and day and night yield him matter enough of troubled Meditations.

2. And yet, lest he that intended no ill (much less to that Person, a poor Man and a Stranger to him) should be swallowed up with Sorrow; he is not devoid of some comfort, as that *Consensus facit Peccatum*, and *Voluntas facit Reatum*; and where those concur not, Misdemeanours are properly *contra nullum Decalogi Præceptum*. And that when God, speaking of such casual Death (*Exod. xxi. 13.*) useth these Words, *If a Man lie not in wait, but God deliver him* (the slain Man) *into his hands*; Divines collect thereupon, that it is not *humanum* but *à Deo*, which no Man's Providence can absolutely prevent. For what God will have done, shall be; and no Creature may dare to set him to school in what manner, or by what Person he will have it perform'd. And *Deuteronom. xix. 6, 10.* God putting the case of the Man slain by the Iron of his Neighbour's Ax slipping off, appointeth Cities of Refuge, lest he should be slain also; *who* (as he saith) *was not worthy of Death*: And again, that *innoxius Sanguis*, innocent Blood be not shed in the Land. Where we may collect, that such Cases are foreseen and order'd by God himself; and that no *Calling*, no not that of the *Priest*, is free from that which God will have accomplish'd; since he must *communem Hominum subire sortem*.

tem. *Homo sum, humani nihil à me alienum puto.* And, *Quod cuique contingere potest, cuius potest*; although of all others, the Priest should be most wary, what he attempt, and how.

3. There is no Text in the Old Testament, which directly distinguisheth the Priest from other Men, in case of Blood; but there are Examples (which may not be apply'd to Evil, for that were to pervert them) resolving one Scruple which is made. As *Moses* was no Priest, yet he gave down the Law; and he consecrated *Aaron* the High-priest, notwithstanding the time was that he had kill'd the *Egyptian*. The *Levites* slew 3000 of the *Israelites*, after the Idolatry with the golden Calf. *Phineas*, who was afterwards the High-priest, slew the *Israelitish* Man with the *Midianitish* Woman, and was blessed by God for it. *Samuel* hewed *Agag* to pieces. *Jehoiada* the Priest commanded *Athaliah* the Usurper to be slain. The *Macchabees* fought for their Country, and so took away the Lives of many a Man. *Paul* was consenting to the Death of *Stephen*. *Peter* (although rebuk'd for it) cut off the Ear of *Malchus*. *Josephus* the Jew, of the Seed of the Priests, was Captain over *Judah*, and fought divers times. Out of all which, I do only make this Collection: That the Priest's Refrainer from Blood is not *ex Jure divino*, but *ex Jure positivo*; *Pontificio* scil. *vel Canonico*, or *Ecclesiastico*, as we call it; out of caution, for Purity and Decency, and good Congruity for so holy a Calling, which cometh so near God, and attendeth at his Altar.

4. See then in the Ecclesiastical Law, what Grace is afforded to him, who against his Will, hath casually been the Death of another. There is in the Decretals, a Title *De Homicidio voluntario vel casu*, concerning the latter of which, there be many Rescripts; which demonstrateth, that in human Life such things do frequently fall out. In these, there are five Chapters, *Cap. Lator*: *Cap. Dilectis filiis*: *Cap. Ex Litteris*: *Cap. Ex Litteris tue*: *Cap. Joannes*: Where the Rubrick is, *Homicidium casuale non imputatur ei qui non fuit in culpa*: and, *Homicidium casuale non imputatur ei qui dedit operam Rei licite, nec fuit in culpa*. And there the Decision is evermore, that there is no Irregularity in promovendo, or in promotus ad Sacros Ordines.

This is the more to be noted, because it is not the Interpreters, but the Body of the Law. And the Gloss thereupon hath, *Nota, quod Homicidium casu commissum, culpa non precedente, non est imputandum*. And, *Sibi imputari non debet, quia fortuitus casus, qui providi non possunt, non praevidit*. And, *De casu fortuito nullus tenetur, cum praevidi non possit*. And upon this the stream of the Canonists do run, as by a multitude of Books may be shew'd: with whom our *Bracon*, a great Civilian and Common Lawyer too; *Homicidium casuale non imputatur*.

5. The two Heads whereto the Law looketh, freeing a Man from Blame, and expressly from Irregularity, are; that the Person by whom the Action is perform'd, do not dare operam Rei illicitae, and that he use diligence of his part, that no hurt be committed. *Azorius* the Jesuit saith, *Irregularitas, cum ob Delictum constituitur, non nisi ex lethali peccato contrahitur: nisi ex Homicidio fiat quis irregularis, eo quod dat operam rei venite & interdictae; nam tunc quovis Homicidium casu sequatur, ob culpam nostram levem vel levissimam, multorum est opinio Irregularitatem contrahi*. And *Ivo* in his Canons, some hundred of Years before him *Si duo Fratres in Sylva Arbores succiderint, & appropinquante casura unus arboris, Frater Fratri dixerit, Cave; & ille fugiens, in pressuram arboris inciderit, ac mortuus fuerit, vivens Frater innocens de Sanguine Germani dijudicatur*. Now, the Case at *Bramstall* is within the compass of these two Conditions. For the Party agent was about no unlawful Work: for what he did, was in the

^a Decr. Greg. col. 1695. cap. 9, 13, 14, 15, 23. ^b Ad cap. Lator. ^c Ad cap. Joannes. ^d Lib 3. Tr. 2. cap. 17. ^e L. 5. cap. 6, p. 332. ^f Et Burch. l. 6. cap. 21.

Day, in the presence of forty or fifty Persons, the Lord Zouch, who was Owner of the Park; not only standing by, but inviting to hunt and shoot; and all Persons in the Field were call'd upon to stand far off, partly for avoiding Harm, and partly lest they should disturb the Game; and all in the Field perform'd what was desir'd. And this course did the Lord Archbishop use to take, when or wheresoever he did shoot; as all Persons at any time present can witness: never any Man being more solicitous thereof, than he evermore was. And the Morning when the Deed was done, the Keeper was twice warn'd to stay behind, and not to run forward; but he carelessly did otherwise, when he that shot could take no notice of his galloping in before the Bow; as may be seen by the Verdict of the Coroner's Inquest.

6. This Case at *Bramfil* is so favourable, that the strictest Writers of these Times directly conclude, that if a Clergy-man committing *casuale Homicidium* be about a forbidden and interdicted Act, yet he is not irregular, if the interdicted Act be not therefore forbidden, because it may draw on Homicide. And thereupon, inasmuch as Hunting is forbidden in a Clergy-man, not in respect of Danger of Life, but for Decency, that he should not spend his time in Exercises which may hinder him from the Study fit for his Calling, or for other such Reasons; Irregularity followeth not thereupon. And to this purpose writeth at large *Soto*, *Covarruvias*, and *Suarez*, who are great Canonists and Schoolmen. And if this be true (as out of great reason it may be so held) how much further is the present Case in question from Irregularity.

7. But some go directly to the point, and say, that the Lord Archbishop did *navare operam rei illicita*, because he was on Hunting; for that was interdicted to a Bishop by the Canon *De Clerico Venatore*; and so by a consequent he must needs be irregular. To which Objection, see how many clear and true Answers there be. As first, that the Canon being taken out of the Decrees, is by *Gratian* himself branded to be *Palea*, no better than Chaff. Secondly, it is cited out of the fourth Council of *Orleans*; and there is no such thing to be found, as the Gloss well observeth. Thirdly, it forbiddeth Hunting *cum Canibus aut Accipitribus*; and none of these were at *Bramfil*. And if you will enforce it by comparison or proportion, the Rule of the Law is, *Favores sunt ampliandi, Odia restringenda*: Where mark, when Hunting with Dogs or Hawks is forbidden, it is not for fear of Slaughter, for there is no such Danger in either of them. Fourthly, the Canon forbiddeth Hunting *Voluptatis causa*, but not *Recreationis* or *Valitudinis gratia*, which the Books say is permitted *etiam Episcopo*. Fifthly, the Canon hath, *Si sepius detentus fuerit*, if he make a Life or Occupation of it; which the World knoweth, is not the Archbishop's case, but a little one time in the Year, directed so by his Physician, to avoid two Diseases, whereunto he is subject, the Stone and the Gout. Sixthly, it is *clamosa Venatio* against which the Canon speaketh, not *quieta* or *modesta*, which the Canonists allow; and this whereof the Question ariseth, was most silent and quiet; saving that this Accident, by the Keeper's unadvised running in, hath afterwards made a noise over all the Country.

8. These Exceptions, as they naturally and without any enforcing, give answer to this Objection of the Canon; so there is another thing that may stop the mouth of all Gain-sayers, if any Reason will content them. And that is, that by the Stat. of *Hen. VIII. 35. cap. 16.* no Canon is in force in *England*, which was not in use before that time, or is not contrary or derogatory to the Laws or Statutes of this Realm, nor to the Prerogatives of the Royal Crown; of which nature this is. For in *Charta de Foresta*, Archbishops and Bishops by name have liberty to hunt: and *13. Ric. II. cap. 13.* a Clergy-man who hath 10 *l.* by the Year, may keep Grey-hounds to hunt.

* L. 5. quest. 1. cap. 9.

And *Linwood*, who liv'd soon after that time, and understood the Ecclesiastical Constitutions and the Laws of *England* very well, in treating of Hunting, speaketh against Clergy-men using that Exercise unlawfully; as in Places restrain'd or forbidden; but hath not one word against *Hunting* simply. And the Archbishop of *Canterbury* had formerly more than twenty Parks and Chaces of his own, to use at his pleasure; and now by *Charter* hath *Free-warren* in all his Lands. And by ancient Record the Bishop of *Rochester*, at his Death, was to render to the Archbishop of *Canterbury* his Kennel of Hounds as a *Mortuary*, whereof (as I am credibly inform'd) the Law taketh notice for the King, *Sede vacante*, under the name of *Muta Canum* and *Mulctura*. To this may be added, the perpetuated use of Hunting by Bishops in their Parks, continu'd to this day without scruple or question: As that most Reverend Man the Lord Archbishop *Whitgift* us'd in *Hartlebury* Park, while he liv'd at *Worcester*; in *Ford* Park in *Kent*; in the Park of the Lord *Cobham*, near *Canterbury*; where, by the favour of that Lord, he kill'd twenty Bucks in one Journey; using Hounds, Grey-hounds, or his Bow, at his pleasure, although he never shot well. And the same is credibly reported of the Lord Archbishop *Sandes*. And it is most true, that the Deans and Chapter of *Winchester* use it as they please in their Franchise. To say nothing of Dr. *Rennal*, whose Hounds were long famous throughout all *England*; and yet he was by profession a Canonist, and knew well what induced Irregularity.

I will add two things more, which directly appertain to the Archbishop of *Canterbury*. The one is, the famous Record, That at the Coronation of Queen *Eleanor*, Wife to *Henry III.* the Earl of *Arundel* (who was by his Place Cup-bearer for that Day) was enforced to serve by a Deputy, because he was excommunicated by the Archbishop, for taking up his Hounds coming into the Earl's Grounds to hunt; where the Archbishop pleaded and alledg'd, that it was lawful for him to hunt within any Forest of *England*; whensoever he would. The other is that which is written of Archbishop *Cranmer*, in his Life, where I will cite the very Words: *Permiserat ei Pater Aucupium, Venationem, Equitationem, &c. Quibus quidem, cum jam Archiepiscopus relaxare animum & abducere se à rebus gravioribus vellet, ita utebatur, ut in Famulatu suo non fuerit quisquam qui in generosum Equum salire ac tractare elegantius, aut Aves Ferasque Aucupio aut Venatione insequi commodius intelligentiusque potuisset: Sape etiam, etsi oculis infirmis esset, Arcum tendens, Sagitta percussit Feram.* Out of all which, and many more Records and Cases that are to be shewed, the Conclusion is clear, That howsoever the Canon may touch Bishops and Clergy-men beyond the Seas, it meddleth not with the Bishops of *England*, who by favour of Princes and the State have Baronies annex'd to their Sees. So that it doth arise out of true collection from these Heads, that there is no danger of Irregularity in the Lord Archbishop's Case, either toward himself or other Men. His Majesty's Princely Grace giveth an end to all; and this he most humbly craveth. For other things, God being appeas'd (as he hopeth that he is) he dreadeth not the Tongue or Pen of any Enemy: among whom, the Popes and Cardinals have wilfully committed many Poisonings, Murthers, and outrageous Acts; and yet they must believe that they are the Head and chiefest Members of the Church.

A N
A N S W E R
T O T H E

Foregoing Apology for Archbishop ABBOT;

By Sir HENRT SPELMAN Kt.

Touching the First, Second, and Third Sections: It may be that the Priests in the old Law (whose Ministry was altogether in Blood) were not prohibited but that upon just Occasion they might shed even the Blood of Man as well as of Beasts; and put on an Armour as well as an Ephod. For the Tabernacle was covered with red Skins, to signify *cruentum Seculum, cruentum Ministerium*: and Moses (whose Hands were dipt in Blood) was not forbidden to be the chief Founder thereof. But when the Temple came to be built (which was the Image of the Church of Christ) then the Hands of David, tho' they had fought the Battels of God, yet because they were seasoned with Blood, they might not lay one Stone in that Foundation. Therefore, when the old Law and this bloody Priesthood were grown to an end, and going out of the World, and that the Priests of the Gospel were entring into their room into the World; our Saviour commanded Peter to put up his Sword; for now, *Arma horrentia Martis rejicienda; and stola candida induenda fuit*. Tho' then some Priests in the old Law and many thousand Levites were Martial-men, yet for many hundred Years in the time of the Gospel, I read not of any: insomuch, that the succeeding Ages desiring a Martial Saint, were driven to suppose St. George. Whether therefore these Laws of the Church, which at this Day prohibit Clergy-men to meddle with Matters of Blood, be merely *ex Jure positivo*, or *ex divino mixto*, I leave it to the determination of the Reverend Divines.

4. Concerning the Cases alledg'd out of the Decretals: it is true that the Rubrick is, *Homicidium casuale non imputatur ei qui non fuit in culpa*; and *Homicidium casuale non imputatur ei qui dedit operam rei licite, nec fuit in culpa*. And so likewise, is that alledged out of the Gloss thereupon, and out of Bracton. But let us parallel the Case in these with them, which are as followeth.

A. and P. two Clerks Sporting together, A. by chance threw P. down, who having a Knife by his side, the same happened to wound A. that he died. Pope Alexander III. commanded the Bishop of Exeter in this Case to admit P. to holy Orders; for Sporting was lawful.

A sickly Chaplain being gotten upon an unruly Horse, and he checking him with Bridle and Spur to stay him, the Horse brake his Bridle, cast his Master, and running over a Woman coming by, kill'd a Child in her Arms. This Chaplain was admitted to holy Orders, for that neither in Will nor Act he committed Homicide, but also did a lawful Act.

One being to unlade a Cart of Hay, looked round about to see if any were near, and seeing none, threw a stack off the Cart, and having unladed it, a Boy was after found dead with a little Stripe in his Face. This Priest after Canonical Purgation was admitted to his Place.

A Monk

A Monk helping to take a Bell down out of a Steeple, casually thrust down a piece of Timber, which bruised a Boy to death. The Monk is judged not incapable of further Ecclesiastical Preferment, for that the Business was Necessary, and the Place not for ordinary Resort.

A Priest tolling a Bell to Prayers, the same fell and killed a Boy. The Bishop is commanded to suffer the Priest to execute his Function, for *Nihil potuit imputari, si Casus omnes fortuitos non prævidit.*

Tho' there be many points in all these Cases (and more in some than others) to excuse the Parties agent; yet will I meddle only with those two which are most eminent, and offer'd by the Apologist; that is, *Animus* or *Intentio innocua*, and *Actio legitima*. Touching the *Intent*, none is so impious as to imagine that his Lordship intended to hurt any Man: yet is there this Difference between his Intent and theirs in the Cases alledged: they intended to hurt neither Man nor Beast, he, tho' not to hurt a Man, yet to kill a Beast: they, *nihil seivum aut non legitimum*: he, *legitimum quiddam sed tamen seivum*. For there is a kind of Cruelty in the slaughter of every thing; and therefore in the old Law (*Lev. XVII. 13.*) *He that taketh any Beast or Fowl by Hunting that may be eaten; shall pour out the Blood thereof, and cover it with Dust*; that the Cruelty appear not, as I take it. And in our Law, those that were exercised in the slaughter of Beasts, were not received to be Tryers of the Life of a Man. Much is to be said out of Histories to this purpose.

But to come to the point whereon all dependeth, Whether the Action his Lordship was now about, be lawful or not? The Places of *Azorius* and *Ivo* are truly cited; and I doubt them not to be Law: that is, to this effect, "That it worketh no Irregularity, where, in a lawful Action a Clerk killeth a Man casually, having first used all Diligence to prevent it. And it appeareth that his Lordship did this so carefully, that all were continually called upon, not only to stand off, but so far off as sheweth his Lordship to be very unskilful in the use of his Bow; and may therefore touch him with Discretion for meddling with so dangerous an Engine in so great an Assembly; and consequently produce Irregularity even by the Words of *Azorius* alledged to excuse him, tho' the Action be lawful: *nam tunc quamvis Homicidium Casu sequatur, ob culpam nostram levem vel levissimam, multorum est opinio Irregularitatem contrahi.*

But not to fall from the Tree by reaching a Twig; we will rest upon the chief Station in the Case, the Nature of the Action; which tho' it be forbidden, yet according to *Soto*, *Covarruvias* and *Suarez* (as it is alledged) induceth not Irregularity when Homicide follows thereon, if it be not therefore forbidden, because it may draw on Homicide: concluding, that tho' Hunting be forbidden to a Clergy-man, yet for that it is not forbidden in respect of Danger of Life, but for Decency, &c. Irregularity followeth not thereon. As for *Covarruvias* and *Suarez*, I have them not; but *Soto* is not happily alledged. For tho' he incline to that Opinion (with *Cajetan*) yet he taketh a Distinction that woundeth the Case in Question; and that is, *Venatione, quæ Armis & Telis fit, profecto fiet Clericus irregularis*: and this falleth out to be now the Case. For this Hunting was perform'd with a *Cross-bow*, a deadly and dangerous Weapon, that hath been the Occasion of many bloody Misfortunes. But in a former passage, *Soto* also saith, that *Cajetan* and *Sylvester* and *Doctores Juris Canonici universalem Regulam astruunt, quod omnis qui dat Operam rei illicitæ, quodocunque ex illa datione sequatur Homicidium, fiat irregularis*. And *Azpilcueta Navarrus* saith, that *Cajetan* in the other Place (and by consequence *Soto*) is to be understood with a Limitation, as meaning *Venationem passerum & perdicum ad Aucupis cantum vel Accipitris, sine Armis in Provinciis*—non *Venationem Ursorum, Aprorum, & Cervorum, quæ Armis exercetur*. *Enchirid. cap. 27. Sect. 237.* Wherein, the Distinction he taketh, making a main Difference be-

tween

tween *Venationem ludicram* and *Venationem Martiam*, concludeth plainly, the Case in hand to have wrought Irregularity: And the Apologist finding no sure ground in this Assertion, buildeth no otherwise upon it, than if it be true as out of great Reason (he saith) it may be so held: and passeth from it to his chiefest Place of Refuge, shewing that the Canon that makes Hunting to be *Actio illicita* doth no way touch his Lordship.

First, for that upon the matter there is no such Canon: insomuch as *Gratian* himself (that collected the Canons) brandeth this to be *Palea* and no better than *Chaff*. It is true he brandeth it with the Term *Palea*, and was a worthy Man; but noted generally to have mistaken many things, and some extremely. But if that be the meaning of the Word, his Error seemeth very perspicuous, as finding this Canon ascribed to the Council of *Orleans* and not finding it there; he presently branded it, *Palea*. But the Canonists have many other Opinions of it, as to signifie τὰ παλαιὰ *antiqua*; or of πάλιν *rum*. *John Andrea*, *Imota*, *Alexandrinus* and *Jason*, famous Professors; think this Title to be put over the Heads of many Canons, to signifie they were added by *Protopalea* a Cardinal, since *Gratian's* time. And Experience excludeth the first Interpretation of the Word, for that the Canons so entituled are very many, and not rejected as *Spurii* or *Palea*. Besides, *Burhard* Bishop of *Wormes*, who lived long before *Gratian*; hath this very Canon in his second Book, cap. 213. and there ascribed (as it ought) to the Council of *Meldis*; as also by *Ivo*, part. 6. ca. 288. If then it be any where in the Councils, it sufficeth; tho' the Collector mistook the Place, which is easily done: as even the Evangelist *Matthew* (cap. XXVII. 9.) citeth a Place out of the Prophet *Jeremy*, which is not found there; but in *Zachariah*.

It is apparent also that many Copies of Councils are unperfect; and want some of the true Canons, as neglected or not finished by the Notary. But if need be, this Canon hath further Warrant, even from the Times almost of the primitive Church. For in *Concil. Agathensi*, of 35 Bishops in An. 435. cap. 55. it is said, *Sacerdotes & Levites Canibus ad venandum & Accipitribus non utantur*. And in *Concil. Epaunensi*, of 70 Bishops, in An. 492. **Ut Episcopi Venatores non sint, nec Accipitres alant*. The Capitularies also of *Ludovicus Imp.* taking notice of it, about the Year 820. prohibiteth Priests, ut *Venationes Ferarum vel Avium minime sectentur*. Addit. 3. ca. 43. So that we have no Reason to account this Canon either *Supposititium* or *Paleam*; but rather to be (as it is indeed) παλαιὸν *Antiquum* or ex *Antiquis*. According to which sense, the Canons of like Nature in the Laws of the *Wise-goths* or *Western-Goths* are in every passage entituled by the very Latin Word (not the Greek) *Antiqua*. And *Justinian* himself seemeth to have had this Distinction in his Eye, when he called his latter Constitutions *novæ*. i. e. *Novellas*, that so they might be mark'd from those of old, which *Cedrinus* in *Justinian's* Life calleth τὰς παλαιὰς νόμους, *Leges antiquas*.

His second Objection is, That it is cited out of the fourth Council of *Orleans*, and it is not there. This we have already answered, and shewed where it is.

Thirdly, he saith it forbiddeth Hunting *cum Canibus & Accipitribus*, and none of these were there. It is strange, a Keeper should go about to strike a Deer, and not have his Lyme-hound to draw after him. But the Canon goeth further, *Canes ad venandum, aut Accipitres, aut hujusmodi res habere non licet*. Where *hujusmodi res* seemeth to contain all Instruments used in Hunting.

Fourthly, *Voluptatis Causa*; not *Recreationis* or *Valetudinis*, which the Books say is permitted, etiam Episcopo. What his Books say, I know not, but my Book saith thus: *Dic breviter, quod venari causa Voluptatis est*

* So Carol. M. in Decreto suo. Furnonens. Synod. Can. 8. Cabilonens. Can. 9. cent. 9. Col. 301 l. 10.

mortale Peccatum, & in Laico; sed venari causa Necessitatis vel Indigentiae Corporis non est mortale Peccatum; in Clerico tamen potius prohibetur. But he adjoyneth, *In Venatione, potius Delectatio quam Actus attenditur.* Atho. in Othob. fol. 114. b. Neither is there here any mention of *Recreation*, unless *Delectatio* and it be all one (as commonly we use it) and then forbidden. Besides, what *Action* or *Recreation* belonging to Health is there, in letting off a Cross-bow; wherein neither Head, Hand, nor Foot, no, not the nimblest member of the Body (the Eye) stirreth all that while.

Fifthly, the Canon hath, *Si sepius detentus fuerit, si he make a Life or Occupation of it, which his Lordship did not.* Burchard saith *detentus*, and with more Reason: and I suppose his Lordship useth it very temperately: yet the Apologist in his Fifth Section insinuateth, that his Lordship doth it often.

Sixthly, whereas he saith that the Canon speaketh against *clamosa Venatio*, not *quieta* or *modesta*; I find no such Word or Distinction in the Canon: yet is there no doubt, that if the Deer be not killed out of hand; but in recovering him, there must be both *Clamor* and *Venatio*.

Thus he counteth the Mouth of the Canon to be stopt. Yet because it is good to make sure Work with so dangerous an Object, now he setteth Law upon Law, the *Common* against the *Canon*, or at least the *Statute*, which indeed hath crack'd a great sort of Canons. "That by the Statute of *Henry VIII.* 35. cap. 16. No Canon is in force in *England*, which was not "in use, or is contrary or derogatory to the Laws or Statutes of this Realm, "or to the Prerogatives of the Royal Crown". Of which sort (he saith) this is one, and giveth his Reasons: for in *Charta de Foresta* Arch-bishops and Bishops by name have *Liberty to hunt*: and 13 Ric. II. cap. 13. *A Clergy-man who hath 10^l by the year may keep Grey-hounds to hunt.*

The name of *Charta de Foresta* (and also of *Hunting*) is *Clero lachrimabile nomen*. For the first Breach that ever was made into the Freedom of Clergy-men, and which gave passage to all that followed, rose from the occasion of Clergy-mens *Hunting in Forests*: which *Henry II.* greatly discontented with, never rested, till by assent of the Pope's Legate *Hugo Petroleonis*, he obtained a Law in the twenty first Year of his Reign, *A. D.* 1157. to convent them therefore before secular Judges, and there to punish them.

But to our purpose: There is no Contradiction (as I take it) between the Canon *de Clerico Venatore*, and *Charta* or *Statutum de Foresta*. The Canon doth say, They shall not hunt; and the Statute doth not say they shall. The Words of the Statute cap. 17. are thus: *An Arch-bishop, Bishop, Earl, or Baron coming to us upon our Command and passing through our Forest, "Liceat ei capere unam Bestiam vel duas, per visum Forestarii, si praesens "fuerit: sin autem, faciat cornare, ne videatur furtum facere"* Here is no Word of *Hunting*; but that they may take a *Deer*; and this they will say cannot be but either with *Dogs* or *Engine*, and so consequently by *Hunting*. But the very Words of *Charta de Foresta* seem to shew, that it was not meant, the Bishop should be an Huntsman, for that it admitteth him not to have so much skill in Hunting as to wind an Horn, tho' that by no Law or Canon be forbidden to him. And therefore saith not, *corniat ipse*, but *faciat corniare*, let him cause an Horn to be blown, &c. I conceive the meaning to be, that the Bishops and Barons shall each of them take as they may: the Barons by Hunting (if they will) in their own Persons; the Bishops as they may, by the Hands of their Officers and Servants. It is a common Phrase in all old Charters, that the Bishops shall have, *Sac* and *Soc*, *Toll* and *Team*, &c. i. e. *Cognisance of Plea, Suit of Court, Toll, and such other Customs*: shall we intend, that he must take these in his own Person? No; it was not *Henry* the third's meaning, when he granted the Charter of the Forest, to break the Laws of the Church: for at the same time in *Magna Charta*

Charta cap. 1. he granteth, that the Church shall have *Omnia Jura sua integra & Libertates suas illasas*; which could not possibly be, if by his Charter he changed the Canons of the Church, especially in matters of Doctrine and Conscience: as, when the Church teacheth that a Clerk may not be a Huntsman, for him to say that he shall be. Doubtless, if he would, the Clergy would not then accept it.

In the Person of a Bishop there be three distinct Faculties: his *Spiritual Function*, wherein he is a Bishop; his *Legal Ability*, wherein he is a Layman and hath Liberty to contract, &c. and his *Temporal Dignity*, wherein he is a Baron and Peer of the Realm, and participateth their Priviledges. I could put Cases wherein every of these may be seen severed from the other; but I should then wander from my matter. Only I present them thus anatomy'd, that it may appear what Portion the Church had in them, what the Common-wealth, and what the King; that so it may also the better appear how the Laws both of the Church and Kingdom are to be applied unto them respectively.

When therefore the King granted temporal Lands unto them: tho' they took them as Lay-Barons, and in their Temporal Capacity, yet might they not otherwise use them than might stand with their Spiritual Function: no more than when he granted Ecclesiastical Possessions to a Lay-man, the Grantee might otherwise use them than as a Lay-man. For Example; it was a common thing in old time, that the King granted Churches to Lay-men, by the name of *Ecclesiam de Dale* and *Ecclesiam de Sale*; yet it was never intended that the Grantee, tho' he had the Churches to order and dispose, should (contrary to his Vocation) meddle with the Divine Service, but present his Clerk only. So in like manner, when the King granted to Clergymen, Chaces, Parks and Warrens; it was not intended that (contrary to the Rules of their Profession and Laws of the Church) they should or might become Hunters and Foresters.

My long stay upon this point, is a preparative to an answer to the next, which is the Statute of *Ric. II.* being in the negative, "That no Priest nor other Clerk, not advanced to 10^{l.} a Year, shall have or keep any Greyhound, nor other Dog to hunt; nor they shall not use Ferrets, Hayes, Nets, Hare-pipes nor Cords, nor other Engines, for to take and destroy Deer, Hares, nor Conies, &c. upon pain of one Years Imprisonment". The Statute (I say) is in the Negative, and saith *that none under 10^{l.} a Year shall keep*; but saith not in the Affirmative, That it shall be lawful for them that have 10^{l.} a Year to keep, &c. I should therefore think, that this Statute doth not discharge a Priest (having 10^{l.} a Year and using Hunting) against the Canon-Law: no more than the Statute of *Usury*, forbidding a Man to take above 10^{l.} Loan for an 100^{l.}, giveth him Liberty to take that 10^{l.} or doth discharge him against the Canons of *Usury*.

Touching his Inference, that *Linwood* speaketh not one Word against Hunting simply by Clergy-men, but against their using it in Places restrained; it is true, for the Text of the Canon led him no further; being only *De Clerico de Transgressione Forestæ aut Parcî alicujus diffamato*, and made to no other intent than to aggravate the Censure of the Ecclesiastical Law, which before was not sharp enough against Offenders in that kind. But *Johannes de Athon* (as great a Canonist and some what elder, whom *Linwood* often citeth and relieth upon as one well understanding the Ecclesiastical Constitutions and the Laws of *England*) hath apparently condemned it in the Place by me recited. Yet is it to be noted, that neither *Athon* nor *Linwood* intended to gloss upon all the Constitutions of the Church of *England*; but *Athon* only upon those of *Otho* and *Othobon*; and *Linwood* (beginning where *Athon* left) upon those of *Stephen* Arch-bishop of *Canterbury* and his successors. There are therefore a great number of Canons and Constitutions of the Church

of England, which neither of these Canonists have either meddled with or so much as touched: as also there be many Statutes in force, which are nowhere mentioned in any of the Abridgements. But *Jo. de Burgo* (another English Canonist, and Chancellor of Cambridge, who wrote in *Richard* the Second's time) taketh notice of this Canon, and that Hunting was thereby forbidden to our Clergy-men, as appeareth in his *Pupilla Oculi*, part. 7. cap. 10. m.

To go on. The Apology saith, "That the Archbishop of Canterbury had formerly more than twenty Parks and Chases to use at his pleasure, and by Charter hath Free-warren in all his Lands."

Habuisse, lugubre: It seemeth the Wisdom of the latter Times (the more pity) dissented from the former; yet did not the former approve that Bishops should use them at their pleasure, but as the Laws and Canons of the Church permitted. For as they had many Parks and Warrens; so had they many Castles and Fortresses, and might for their safety dwell in them: but as they might not be Souldiers in the one, so might they not be Huntsmen in the other. In like sort, the Abbat and Monks of *St. Albans* (as *Mat. Paris* reporteth the Case in *An. 1240. pag. 205.*) had Free-warren at *St. Alban's*, &c. by Grant of the Kings, and recovered Damages against many that enter'd into the same and hunted: for the having of it was lawful, as appeareth in the *Clementines*, *Tit. de Statu Monast. §. Porro à Venatoribus*. But it is there expressly forbidden, that either they should hunt in it themselves, or be present when others do hunt, or that they should keep *Canes venaticos aut infra Monasteria seu Domus quas inhabitant, aut eorum Clausuras*, p. 207. *Radulphus de Diceto*, in *An. 1189.* saith, That the Bishops of that time affected to get into their hands *Comitatus, Vice-comitatus, vel Castellarias*; Counties, Sheriff-wicks, and Constableships of Castles; but shall we think they either did or might use them in their own Persons, as, with Banners display'd to lead forth the Souldiers of their County, or with Sword and Target to defend the Walls of their Castles, or with a white Wand to collect the King's Revenues, &c. It is true, that *Walter* Bishop of *Durham* having bought the County of *Northumberland* of *William* the Conqueror, would needs sit himself in the County-Court; but he paid dearly for it: for his Country-men furiously slew him, even sitting there. *Mat. Paris* in *An. 1075.* So *Hugh* Bishop of *Coventry* exercised the Sheriff's Place, but was excommunicate for it, as *contra Dignitatem Episc.* and so acknowledged his Error. *Dicet. in An. 1190.*

But every one will say, It was a common thing in old time for Bishops to be Judges in secular Courts. I confess it, and think it godly and lawful as it was used at the first. For the Bishop and the Earl sat together in the County-Court: the Bishop as Chancellor, to deliver *Dei Rectum* and *Populum docere*; the Earl as Secular Judge, to deliver *Rectum Seculi*, and *Populum coercere*, as is manifest by the Laws of King *Edgar* and others. But when the Bishops began to supply both Places, and to be meer Judges of Secular Courts, then were they prohibited by many Canons: And therefore *Roger* [after] Bishop of *Salisbury* being importuned by the King to be his Justice, would by no means accept it, till he had obtained Dispensation, not only from his Metropolitan the Archbishop of *Canterbury*, but from the Pope himself, as *Dicetus* affirmeth in *An. 1190.* and no doubt but others of Wisdom did the like. In those things therefore that Bishops did against Canons, we must take no Example to follow them: for tho' their publick Actions be manifest, yet their Dispen-sations and matter of Excuse is for the most part secret. Neither doth every thing done against a Canon produce Irregularity, if some criminous Mischance follow not thereon.

For the Record that relateth, that the Bishop of Rochester was at his Death to render to the Archbishop of Canterbury his Kennel of Hounds as a Mortuary, and that the Law takes notice of it for the King, *Sede vacante*, under the name of *Muta Canum* and *Multura*: I must (as they say in the Law) demand Oyer of the Record; we shall otherwise spend many Words in vain. But that Dogs should be given for a Mortuary, is against all likelihood: For a Mortuary is an Offering given (by him that dieth) unto the Church, in recompence of his Tithes forgotten; and it is a plain Text, *Deut. xxviii. 18. Non offeres Mercedem Prostituti, nec Pretium Canis, in Domo Domini.* But if there be no other Word to signify a Kennel of Hounds, than *Muta Canum* and *Multura*, the Exposition may be doubtful, tho' it come somewhat near it. *Freder. II. Emp.* in the Prologue to his second Book *de Venatione*, speaking of an *Hawks-mue*, saith, *Domicula quæ dicitur Muta*; following the Italian Vulgar, which cometh à *mutando*, because the Hawk doth there change her Coat. And for the Affinity between Dogs and Hawks, it may be *καταχρηστικῶς* transferred to a Dog-kennel; and whether to the Hounds themselves or no, it is not much material. For, no doubt, they that may have Parks and Warrens, may have Dogs and Hounds for Hunting: but every body that may have Hounds may not use them themselves, as appeareth by that which I said before out of the *Clementines*, and by the Opinion of Justice *Brudnel*, with the rest of the Judges, *12. Henr. VIII. fol. 5.* where it is said, a Man may keep Hounds notwithstanding the Statute of *13. Ric. II.* but he must not hunt; as he may keep Apparel of Cloth of Gold, notwithstanding the Statute of *Apparel*, but he must not wear it. Besides, religious Persons in ancient times were driven to have Dog-kennels for the King's Hounds: for *Rad. Niger*, in *An.* saith, that King Henry II. *Abbatem Hypodromos & Canum Custodes fecit.*

After all this, his Lordship is defended with the perpetual use of Hunting by Bishops in their Parks, and by the particular Examples of some eminent Men his Predecessors, and others. This Point of Use and Example I have in a manner answered before; speaking, as it fell in my way, of Bishops being secular Judges. One Line serveth to level at them both: yet for further and more perspicuous resolution of the matter, see both the Example and the Use censured in the *Decret. 34. Distinct. cap. 1.* by Pope Nicholas, *ad Albinum Archiepisc. alias Aluinum. Quemadmodum relatione Fidelium nostris auribus intimatum est, quod Lanfredus Episcopus, qui & juvenis esse dicitur, Venationi sit deditus; quod vitium plurimos etiam de Clericali Catalogo, genere duntaxat Germanos & Gallos, irreverenter implicat. Verum iste (si ita est ut audivimus) merito juvenis dicitur, qui juvenilibus desideriis occupatus, nulla gravitate constringitur. Et infra: Nam (ut Beatus dicit Hieronymus) Venatorem nunquam legimus sanctum.* Then blaming him also for being too familiar with his Daughter, he saith, *Oportet ergo Fraternalitatem tuam synodale cum Episcopis & Suffraganeis tuis convocare Concilium, & hunc salutaribus Colloquiis Episcopum convenire, atque illi Pastoralis Authoritate præcipere, quatenus ab omnium Bestiarum vel Volucrum Venatione penitus alienus existat: or (in short) to excommunicate him.*

Here he sheweth Hunting to be used both by a Bishop and a multitude of Clerks (*plurimos.*) But neither the Person and Dignity of the one, nor the Multitude nor frequent Use in the other, maketh the Pope to abstain from condemning it. Howbeit, they whose Example the Apologist alledgeth, little respected (as I think) the whole Volume of Canons.

Touching the Record of the Earl of Arundel's Excommunication for taking the Archbishop of Canterbury's Hounds coming into the Earl's Grounds to hunt; and the Archbishop's pleading, *That it was lawful for him to hunt in any Forest of England whensoever he would*, we must (as we before said) pray Oyer of the Record; for *parols font plea*, and their Certainty appears

not

not here, nor what became of the Issue: which, tho' it fell out to be found for the Archbishop, yet perhaps it discharged him not against the Canon. And well might he be as bold with the Canon, as he was with the Law: For it is directly against the Law both of *England* and *France*, to excommunicate a Peer of the Realm without the King's Assent: and therefore *Henry III.* was sore offended with the Archbishop for this Excommunication; (and the the Bishops of *London* and *Norwich* were called in question for the like in *Henry the Second's* time; as *Matthew Paris* reporteth, pag. 99.) But because his Case sways the Cause to the Ground; I must dwell a little the longer upon it, to shew what became of it. The truth is, it was ended by Comprise in the Chapel at *Slyndon*, upon Friday after the Circumcision of our Lord, 1258. that is 43. *Hen. III.* in this manner: *Quod idem Archiepiscopus & Successores sui semel in quolibet Anno, & non plus, cum transferint per dictam Forestam* (i.e. de *Arundel*) *cum una Lesia de sex Leporariis, sine aliis Canibus & sine Arcu, habeant unum Cursum in eundo & alium in redeundo; ita quod si capiant unam Feram, illam habebunt; si nihil capiant in illo cursu, nihil habebunt. Si vero capiant plus quam unam Feram, Archiepiscopi, qui pro tempore fuerint, habeant quam elegerint, & residuum habeant dictus Dominus Johannes & heredes ejus, &c.* Then is it further awarded that the said Earl, his Heirs and Assigns, shall yearly for ever pay unto the said Archbishop and his Successors, 13 Bucks and 13 Does, (*captas de Fermysun*, as the Record saith) at times there appointed. And then followeth this Close, which maketh all plain: *Et actum est expresse inter Partes de Precepto & Ordinatione dictorum Arbitratorum, quod dictae Partes procurabunt Confirmationem Domini Papae & Domini Regis super praesenti Confirmatione.*

By this Record it appeareth, that neither the Earl could make this Grant without Licence from the King, (for that all Forests are the King's, and no Subject can have them otherwise than in custody) nor the Archbishop could safely use the Privilege of Hunting without Dispensation from the Pope: and tho' I yet find not where the one was obtain'd from the Pope, yet I find where the other was granted from the King; and namely from *Edward* the First, in the second Year of his Reign; where all the Award and Composition before said, is (by way of *Inspeximus*) recited and confirmed. But the Composition for the Bucks and Does, was after in *Edward* the Third's time released by the Archbishop *Simon Islip*, having taken for the same 240 Marks; as witness *Antiqq. Britann. cap. 55.*

And it seemeth further by this Record, that the Archbishops of *Canterbury* had not at that time Dispensation from the Pope, to hunt where they listed in any Forest of *England*; for then should he not have needed special Dispensation in this case. But howsoever the Dispensation or Confirmation was hereupon obtain'd, it is apparent that it stretch'd no further than to hunt with Grey-hounds; for the *Bow* is expressly forbidden and excepted.

It may be some will extend the Word *Confirmation*, to be meant of some Right of *Hunting*, which the Archbishop (upon this Arbitrement) was to disinherit his Church of: which I leave to the Judgment of the Lawyers. For it may contain both; tho' I never saw any Precedent of the Pope's in that kind for so small a matter; but of the other kind, we have before made mention of one to *Roger* Bishop of *Salisbury*, and a multitude of others are to be produc'd.

Again, if they have a Dispensation for Hunting, yet it hath some Limitation either of the Place or the Manner; which his Lordship (if he justify under that) must shew particularly.

To come now at last to the last point of the Apology, drawn from the particular Example of Archbishop *Cranmer*; who, in the Description of his Life (*Britannicarum Antiqq. cap. 68.*) is set forth to hunt, shoot, and ride a great

great or stirring Horse with notable Activity, even when he was Archbishop, ^{Generosum Equum.} and in the Words recited by the Apologist. But these be * Exercises of War, not of Religion; fit for Barons not for Bishops; who in ancient time, following the Example of our Saviour and his Apostles, walked on foot, as appeareth by *Bede, Eccl. Hist. l. 3. cap. 14. & lib. 4. cap. 3.* and beginning to ride, used here in *England* Mares, as *Bede* also witnesseth, *lib. 2. cap. 13.* in other Places Mules, not Horses; for *Bellum hæc armenta minantur*, as not only the Poet saith, but as the Scripture also, *Prov. XXI. ult. Equus paratur ad diem Belli.* And such belike, did this Archbishop *Cranmer* mount upon and mannage, as the Words imply, *ut in Famulatu suo non fuerit quisquam qui in Generosum Equum salire, ac tractare elegantius — potuisset.* Besides, the shooting here mentioned seemeth not to be the *Long-bow*, which stirreth the Body and is profitable to health, but that deadly Engine (which imagineth Mischief as a Law) the *Cross-bow*, whose force a Man cannot mitigate as in other Weapons, and is properly numbred amongst the Instruments of War; and therefore by a multitude of Canons prohibited to Clergy-men, so that they may not use them * *pro Justitia exercenda* (as appeareth by the Constit. of *Othob. Tit. de Clericis arma portan.*) nor equitantes per loca periculosa, as it is in the Gloss upon the Decret. of *Gratian* p. 992. where the Text is, *Clerici arma portantes & Usurarii excommunicentur.* But I have gone the length of my Tedder, I mean as far as the Apology leadeth me; and therefore now, *Manum de Tabula.*

The Case of this Reverend and most worthy Person deserveth great Commiseration and tender handling: for who can prevent such unexpected Casualties? Yet may the consequence prove so mischievous both to himself and those that are to receive their Consecration from him, as of Necessity it must be carefully look'd into and provided for. Let me remember an ancient Precedent, even in one of his own Predecessors, *Stigand*, Archbishop of *Canterbury* in the time of the Conquest, who, because he had not Canonically received his Consecration, but from the hands of Pope *Benedict* (who stood excommunicate and *Sacris interdictus*) was not only deprived himself by Authority of a Council, but also the Bishops and Abbots which had taken their Consecration from him. Therefore the Bishops of *Wells* and *Hereford* foreseeing that Evil; to make all clear, fetch their Consecration at *Rome* from Pope *Nicolas*: *Vitabant enim* (saith *Flor. Wigorn. in An. 1070.*) ^d *à Stigando qui tunc Archiepiscopatu Dorobernia præsidebat, ordinari: quia noverant illum non Canonice Pallium suscepisse.* It is good to follow the Counsel of *Gratian* in the like matter: *Consultius est in hujusmodi Dubio abstinere quam celebrare, cap. 24. 1716.*

But because we are fallen into a Case, wherein perhaps some extraordinary Consecration may be required; let me also relate a strange Consecration used in the Entrance of the Reign of * *Henry I. An. 1100.* where *Eadmer* a Monk of *Canterbury* being elected by the Clergy and People of *Scotland* to be Bishop of *St. Andrews*, with the great good liking of King *Alexander* and the Nobility; yet by reason of some Discontentments the same King had conceived against the Archbishop of *Tork*, within whose Province *Scotland* then was, he would by no means agree that *Eadmer* should take his Consecration from that Archbishop; and after much consultation how then it might otherwise be performed, it was at last agreed, that the Staff of the Bishoprick

* To Ride, Shoot and Hunt, be the three Martial Qualities, whereby the *Rutil* in the ninth Book of *Virgil*, proveth his Countrey-men to be good Souldiers:

*Venatu invigilant Pueri, sylvasque fatigant:
Elettere ludus equos, & spicula tendere cornu.*

^b Vid. *Malm. p. 214. l. 93. Balæus. Cent. 1. cap. 74. in Append. citat. Magdeburgg. Cent. 7. cap. 7. col. 204.* ^c *Possunt tamen Clerici arma portare ex causa justa, ut puta si transeant per loca periculosa, ad terrorem latronum, licet non debent percutere.* *Pupil. Oc. par. 7. cap. 10. l. ubi Libri citantur alii.* ^d *V. Malm. de Gest. Pontif. l. 1. pa. 204. l. 50. e Chron. pa. 44. col. 2.*

should

should be solemnly laid upon the Altar, and that *Eadmer* taking it from thence, should receive it as deliver'd him from God himself: which accordingly was done. This calleth to my mind another of like Nature somewhat more ancient: where *Wulstan*, the good Bishop of *Worcester*, both resigned his Bishoprick by laying the Staff thereof upon the Shrine of *St Edward* the Confessor (by the agreement of a Council holden under *Lanfranc*) and in like manner received the same again from thence, in the presence of King *William*, the Archbishop *Lanfranc*, and many others; not without some Miracle, as *Matthew Paris* writeth it in *An. 1095*. These as *παράδειγμα*.

And thus, in this matter of *Shooting*, if I have done as the Proverb saith, *Shot like a Gentleman*, that is fair, tho' far off, it sufficeth. I humbly crave pardon.

19. Octob. 1621.

Recep. Apolog.
8. Octob. preced.



SOME

SOME
LETTERS and INSTRUMENTS

Concerning

The killing of *Hawkins* by Archbishop *Abbot*.

A LETTER written by his Majesty to the Lord Keeper, the Bishops of *London*, *Winton*, *Rocheſter*, *St. Davids*, and *Exeter*, Sir *Henry Hobart* Kt. Chief Juſtice of the Common-Pleas, Mr. Juſtice *Dodderidge*, Sir *Henry Martin*, and Mr. Doctor *Steward*, or any ſix of them, whereof the Lord Keeper, the Biſhops of *London*, *Winton*, and *St. Davids* to be four.

IT is not unknown unto you what happened this laſt Summer unfortunate-ly to our Right Truſty and our Right Well-beloved Counſellor the Lord Archbiſhop of Canterbury; who ſhooting at a Deer with a Croſs-bow in Bramſil-park, did with that Shoot caſually give the Keeper a Wound, whereof he died. Which Accident, tho' it might have happened to any other Man, yet becauſe his eminent Rank and Function in the Church, hath (as we are informed) miniſtred occaſion of ſome Doubts, as making the Caſe different in his Perſon, in reſpect of the Scandal (as is ſuppoſed:) We therefore being deſirous (as it is fit We ſhould) to be ſatisfied therein, and repoſing eſpecial Truſt in your Learning and Judgment; have made choice of you to inform Us concerning the Nature of this Caſe: And do therefore require you to take it preſently into your conſideration, and the Scandal that may have riſen thereupon: And to certify Us, what in your Judgments the ſame may amount unto, either to an Irregularity or otherwiſe. And laſtly, what means may be found to redreſs the ſame (if need be.) Of all which Points we ſhall expect to hear your Reports with what diligence and expedition you poſſibly may. Dated at Theobalds 3. Oct. 1621.

A Letter from the Lord Keeper to Archbishop *Abbot*, intimating the Reception of his Majesty's Letter.

May it pleaſe your Grace,

MY Lord of Wincheſter, my Lord Hobart, Sir John Dodderidge, Dr. Martin, and my ſelf, having met this Afternoon about a Letter ſent unto us (together with ſome others) under his Majesty's Signet; and finding the Contents thereof to require from us ſome Information of the nature of an unfortunate Act, which doth refer unto your Grace: We thought our ſelves ty'd in all Juſtice and Reſpect, to ſend your Grace (as I do here incloſed) a Copy of his Majesty's Letter: And to let your Grace underſtand, that we are ready to receive from your Grace (in Writing) all the qualifying Circumſtances of the Fact (if any ſuch there be) omitted in this Letter; that

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we may be better grounded to deliver our Opinions (as is desired) concerning the nature of this unlucky Accident. And we have appointed Two of the Clock in the Afternoon upon Saturday next, to be the Time; and this College of Westminster to be the Place of our Meeting, to receive what Information of the Fact your Grace shall be pleas'd to communicate unto us. And ceasing to be further troublesome, I shall ever rest

Westminst. Coll.
this 5th of Octob.
1621.

Your Grace's poor Friend
and Servant,
Jo. Linc. & C. S.

The Archbishop's Answer.

My very good Lords,

I Thank you for sending me the Copy of his Majesty's Letter, which concerneth the unhappy Accident that befel me in Hampshire. I here inclosed send unto your Lordships a Copy of the Verdict given up by the Jurors unto the Coroner; as also a Relation of some Circumstances of this Fact, which are not expressed in that Verdict. For the first, being already upon Oath, it needeth not (as I conceive, under your Lordship's favour) any further Verification: And for the other, such of the Particulars as are not included in the Verdict, there are in readiness those who will testify the same. And for the better expedition of the whole business, if your Lordships shall once resolve, what are the special Points in Law to be insisted upon; I will, with all convenient speed, cause my Council to be ready to attend you; by whom I desire to give your Lordships satisfaction. And so commending my Love and Service to your Lordships, and forbearing to be further troublesome, I rest

Your Lordships very loving Friend,

Lambeth, Oct. 13. 1621.

G. CANT.

A Note of my Lord Keeper's at the bottom of the Letter.

*" To this Letter we answered, that we had no Warrant to hear Council; nor could we in justice hear any, unless the Credit of the Church
" and Honour of the King had their Council likewise on the other side.*

Jo. Linc. & C. S.

The Opinion of the Bishops and others, to whom the Consideration of Archbishop Abbot's Case was referred; in a Letter to his Majesty.

May it please your Majesty,

Whereas we receiv'd a Command from your Majesty under your Royal Signet, to deliver our Opinions unto your Majesty, whether an Irregularity or Scandal might arise by this unfortunate Act, which God permitted

mitted to come to pass by the hand of the most Reverend Father in God the Lord Archbishop of Canterbury, shooting in a Cross-bowe at a Deer in Bramfil-park; as also of the Cure and Remedy of the same Irregularity, in case it should be so adjudg'd. We do in all Lowliness and Humility return this Account unto your Majesty:

For the first,

Whether any Irregularity be contracted by this Act, in the Person of my Lord Archbishop or not? No greater part of our number could assent or agree: Because the Canons and Decrees themselves are so general and so ready to entertain Distinctions and Limitations, the Doctors and Glosses so differing, Inferences and Disputes so peculiar to every Man's Conceit and Apprehension, Authorities of Canonists and Casuists so opposite in this very Case in hand; that we could not return unto your Majesty any unanimous Resolution or Opinion in the same.

For the second,

Whether any Scandal may arise out of this Act? We are of opinion, a Scandal may be taken by the Weak at home and the Malicious abroad; tho' most of us believe there was no Scandal given by the said Right Reverend Father.

For the third,

We are all agreed, not only that a Restitution or Dispensation may be granted by your Majesty, either immediately under the Great Seal, or (which most of us in all Humility represent unto your Majesty) by the hands of some Clergy-men, delegated by your Majesty for that purpose, or what other way your Majesty shall be pleas'd to extend that Favour. But withal, we are of opinion, that it is most fitting for the said Reverend Father, both in regard of his Person and the Honour of the Church, to sue unto your most Gracious Majesty for the said Dispensation in majorem cautelam, si qua forte sit Irregularitas. All which, craving Pardon for our Weakness, we do in all Humbleness submit to the Decision of your Majesties most profound and incomparable Wisdom.

Jo. Linc. elect. C.S.

Geo. London.—La. Winton.—Jo. Roffens.

Guil. Menevens. elect.—Valen. Exon. elect.

Cir. di. 10. Nov.

Henr. Hobart.

1621.

Jo. Doddridge.

H. Marten. Ny. Stywarde.

DISPENSATIO

CUM

GEORGIO Archiepiscopo Cantuariensi,

Super IRREGULARITATE.

*RE*verendissimo in Christo Patri Georgio Providentia divina Cantuariensi Archiepiscopo, totius Angliæ Primati & Metropolitano, Johannes Lincoln. Georgius London. Lancelotus Winton. Samuel Norwicens. Thomas Coven. & Lich. Arthurus Bathon. & Wellen. Nicolaus Eliensis, & Georgius Cicestrensis, permissione divina respectu Episcopi de Provincia Cantuar. Salutem & Gratiam in Domino sempiternam. Recepimus Literas Commissionales à Serenissimo in Christo Principe ac Domino nostro Domino Jacobo Dei gratia Angliæ, Scotiæ, Franciæ & Hiberniæ Rege, Fidei Defensore, &c. sub Magno Sigillo Angliæ confectas & nobis directas; quarum tenor sequitur in hæc verba: "Jacobus Dei gratia Angliæ, Scotiæ, Franciæ & Hiberniæ Rex, Fidei Defensor, &c. Reverendo in Christo Patri, & prædilecto & perquam fideli Consiliario nostro Johanni Episcopo Lincoln. Custodi Magni Sigilli nostri Angliæ, ac Reverendo in Christo Patri Georgio Episcopo London. ac Reverendo in Christo Patri ac prædilecto & perquam fideli Consiliario nostro Lanceloto Episcopo Winton. necnon Reverendis in Christo Patribus, Samueli Norwicen. Thomæ Coven. & Lieben. Nicholao Elien. Arthuro Bathon. & Wellen. & Georgio Cicestren. respectu Episcopis, Salutem & Gratiam.

"Humili nobis Supplicatione exposuit Reverendissimus in Christo Pater, prædilectus & perfideli Consiliarius noster Georgius Cantuar. Archiepiscopus, quod cum nuper in Parco quodam vocato Bramzil-park apud Bramzil in Comitatu nostro Southamton. per honorandum Virum ejusdem Parci Dominum rogatus & invitatus, Damam Sagitta figere destinaret, debita adhibita diligentia ne quid inde periculi cuiquam eveniret; forte tamen accidit, ut Sagitta ab eo emissa & in Feram directa, in quendam Petrum Hawkins, adtunc Parci prædicti Custodem, improvide & temere se periculo ictus sagittæ exponentem, & per locum ubi à præfato Archiepiscopo conspici non potuit cum impetu transcurrentem incideret, eique brachium sauciaret; ex quo quidem vulnere infra unius horæ spatium expirabat: & quamvis, propter hujusmodi homicidium casuale, nulla præfati Archiepiscopi culpa sed ipsius occisi temeritate contingens, idem Reverendissimus Pater, bona fretus conscientia, se nullam omnino Irregularitatem incurrisse, persuasissimum habeat; provida tamen animi circumspectione, & ut omnis infirmorum mentibus scrupulus eximatur, secum à nobis, super omni & omnimoda Irregularitate & Irregularitatis nota aut suspicione, si quam præmissorum ratione contraxisse forsitan aliquibus videri possit, ad cautelam & ex superabundanti dispensari humiliter supplicavit: Sciatis igitur quod nos Petitionis hujusmodi vim & efficaciam regio animo & pio affectu ponderantes, & de veritate præmissorum sollicita indagatione certiores facti, & ut piam Reverendissimi Patris intentionem hac in re sequamur, & ad abundantiorē cautelam, perfideli Consiliarii nostri optimeque de Ecclesia & Republica meriti Præsulis Statum,

Famam

" Famam, & Dignitatem, nostri etiam Patrocinii minime tueri & fir-
 " mare dignoscatur, ad presentem venimus dispositionem: Vobisque vel
 " aliquibus sex vestrum, quorum vos prefat. Johannem Lincoln. Georgium
 " London. Lancelotum Winton. & Samuelem Norwicen. respective Epif-
 " copos, quatuor esse volumus, de quorum etiam Fide, Judicio, & Industria
 " plurimum confidimus, mandamus, & de Gratia nostra speciali & ex Au-
 " thoritate nostra regia suprema & Ecclesiastica, qua fungimur, pro Nobis,
 " Hæredibus, & Successoribus nostris damus & plenam concedimus Facul-
 " tatem & Potestatem per presentes, quatenus vos vel aliqui sex vestrum;
 " quorum vos prefatos, Johannem Lincoln. Georgium London. Lancelotum
 " Winton. & Samuelem Norwicen. respective Episcopos, quatuor esse vo-
 " lumus, cum prefato Reverendissimo Patre super omni & omnimodo Juris
 " vel Facti defectu, censura, sive pœna aliqua Canonica & Ecclesiastica,
 " præsertim vero Irregularitate omni seu Irregularitatis notâ (si quæ for-
 " sitan ratione præmissorum contracta fuit) vel quibusdam contracta esse
 " videatur, utque in susceptis Ordinibus & Jurisdictionibus secundum
 " concreditam sibi ratione Ordinis & Archiepiscopatus sui potestatem libere
 " ministrare, frui, exercere, & gaudere valeat, ad majorem cautelam dis-
 " pensetis, ac cetera omnia & singula, quæ ad Statum, Commodum, & Ho-
 " norem prefati Reverendissimi Patris conservandum & corroborandum in
 " in hac parte necessaria fuerint seu quomodolibet opportuna faciatis, &
 " Dispensationem hujusmodi, ceteraque sic ut præfertur per vos aut ali-
 " quos sex vestrum, (quorum vos prefatos, Johannem Lincoln. Georgium
 " London. Lancelotum Winton. & Samuelem Norwicen. respective Epif-
 " copos, quatuor esse volumus) faciendam, debita juris forma conceptam, &
 " in Scriptum redactam, Sigillisque vestris seu Sigillo aliquo authentico mu-
 " nitam, prefato Archiepiscopo tradere non differatis. Quam quidem Dis-
 " pensationem, ceteraque sic ut præfertur per vos aut aliquos sex vestrum,
 " quorum vos prefatos, Johannem Lincoln. Georgium London. Lancelotum
 " Winton. & Samuelem Norwicen. respective Episcopos, quatuor esse volu-
 " mus, peragenda, insuper sub Magno Sigillo nostro Angliæ confirmari volu-
 " mus; & super hiis prefati Magni Sigilli nostri Custodi, aliisque Cancellariæ
 " nostræ Ministris quibuscunque expresse mandamus, & plenam tenore præ-
 " sentium concedimus potestatem. Teste meipso apud Westmon. xxii. die No-
 " vembris, Anno regni nostri Angliæ, Franciæ, & Hiberniæ xix. & Scotiæ lv.
 " Secundum tenorem & exigentiam Literarum commissionarium præcitatarum,
 " & ad eximendum omnem scrupulum ab infirmorum mentibus, si quis forsi-
 " tan sit aut fuerit in ea parte conceptus: Nos prædicti, Johannes Lincoln.
 " Georgius London. Lancelotus Winton. Samuel Norwicen. Thomas Coven.
 " & Lichfield. Arthurus Bathon. & Wellen. Richardus Elien. & Georgius Cice-
 " strens. respective Episcopi, Dei nomine primitus invocato, ac Deum Pa-
 " trem oculis solum habentes, & considerantes atque pro certo habentes, quod
 " dicta Venatio, cui per te data erat opera, quando dictum casuale Homici-
 " dium (te nihil tale suspicante) accidebat, erat modesta, decens, & quieta,
 " & quod debita per se adhibita erat diligentia in dicta Venatione ad præca-
 " vendum ne quid periculi alicui inde eveniret, Tecum prefato Georgio Archi-
 " episcopo Cantuariensi super omni Irregularitate & Irregularitatis nota, si
 " quam forsitan ratione casualis Homicidii sive Mortis prefati Petri Hawkins
 " incurristi, vel aliquibus incurrisse videaris, ad omnem & qualemcunque Juris
 " effectum dispensamus; teque prefatum Georgium Archiepiscopum Cantua-
 " rensem ac Personam tuam ab omnibus & singulis Inhabilitatibus, Suspen-
 " sionibus, Irregularitatibus, aliisque Pœnis, Impedimentis, Censuris, & Co-
 " ercionibus quibuscunque Ecclesiasticis sive Canonicis (si quam forsitan ra-
 " tione præmissorum aut eorum alicujus incurristi, aut aliquibus incurrisse
 " videaris) ad omnem & qualemcunque Juris effectum liberamus, ac tenore
 " præsentium pro liberato haberi decernimus & pronunciamus: quemque
 " defectum,

*Defectum, Labem, Notam, sive Maculam (si quam forsitan ratione præmissorum aut eorum alicujus contraxisti, aut aliquibus contraxisse videaris) penitus abolemus, ac pro abolitis haberi decernimus & pronunciamus: Teque etiam præfatum Georgium Archiepiscopum Cantuariensem ex superabundanti & ad majorem cautelam, rehabilitamus & restituimus ad omnem & qualemcunque Juris effectum. Et ut in susceptis Ordinibus & Archiepiscopatu prædicto, ac in omnibus & singulis Jurisdictionibus, Privilegiis, Præ-
 eminentiis, Prærogativis, Dignitatibus, atque aliis rebus quibuscunque, aliquomodo ad dictum Archiepiscopatum spectantibus & pertinentibus libere ministrare valeas; concedimus & indulgemus, perinde ac si prædictum casuale Homicidium commissum non fuisset, Canonibus, Legibus, Decretis, Ordinationibus, & Constitutionibus Ecclesiasticis quibuscunque contrariis (si quæ sint in ea parte contraria) in aliquo non obstantibus. In cujus rei testimonium, Sigilla nostra Episcopalia hisce præsentibus apponi fecimus. Dat. duodecimo die Decembris, Anno Domini millesimo sexcentesimo vicesimo primo.*

Teste Rege apud Westmon. 24. die Decembris, Anno Regni Regis Jacobi, &c. decimo nono, & Scotiæ quinquagesimo quinto.



Of the ORIGINAL
OF
TESTAMENTS and WILLS,
And of their PROBATE,
To whom it anciently belong'd.

17. June
1633.

THE Word *Testament* or any other for a last Will is not found in all the Scripture before *Christ's* time. And tho' it be common in the Vulgar Translation, yet St. *Jerome* noteth that it is according to the *Hebrew* to signify *Pactum* or *Fædus*, and so the *Geneva* Translation expresseth it. Altho therefore there be many Passages in the Old Testament which seem to be meant of Wills, and so expounded by Interpreters: As where it is said that *Achitophel*^a put his House in order and hanged himself. And where *Hezekiah*^b is commanded from God to put his House in order, for he should die: Yet there appeareth no Law nor Form of Wills; and the Declarations that *Jacob*, *Moses*, *Joshua*, *David*, &c. made at the times of their Death were matter of Consolation and Counsel, *Effata novissima* or *ultima Elogia*^c, but not Testaments as we use the Word.

Sigonius in his Book of *Jewish Antiquities* maketh no mention of their Wills, nor do I yet find any in *Josephus*. It is true, that S. *Paul* maketh express mention of them, but not till the *Romans* had conquer'd the *Jews*, and impos'd their Law upon them. Then S. *Paul* speaketh of them according to the *Roman* Law, not *Judicial*. Of all this I desire further advertisement.

It is observed that the ancient *Greeks*, who (as *Josephus* testifieth) fetch'd their Laws from the *Jews*, had not any.

Tacitus reporteth of the *Germans* in his time, which was about 80 Years after *Christ*, *Successores sui cuique Liberi & nullum Testamentum. Si Liberi non sunt, proximus gradus in possessione, Fratres, Patruus, Avunculus*, with their Descendants according to our Law.

It is therefore very probable, that our *Saxon* Ancestors, coming out of *Germany*, observed for a long time the Custom of their Country, and that they had not the use of making Wills; as neither had their Brethren the *Normans*.

The Custom therefore of making Wills among the *German* and Northern Nations was taken up by little and little from the *Romans*, in some Places after one manner, in some after another, as it is to be seen in *France* it self.

When the *Roman* Emperors grew potent in *Germany*, and the *German* Princes came to be Emperors, the *Germans* generally forsook their ancient Custom spoken of by *Tacitus*, and received the *Roman* Law.

The rest of the *Angli* that remained in *Germany* and came not over into *England*, made a Law^d about the Year of our Lord 900. That it should be lawful for a Free-man to dispose his inheritance by Will as he pleased.

^a 2 Sam. xvii. 23. ^b 2 Kings xv. 1. ^c Cod. de Testam. l. 30 ^d L. Angl. tit. 13. de potestate testandi p. 485.

The Normans kept the old Custom^a in part, and left it in the other Part. They suffered him that had neither Wife nor Children (if he were twenty Year old) to make a Will and bequeath his moveable Goods as he listed, either to or from his Kindred. So likewise if he^b were married and his Wife dead.

Having Children^c he could dispose but of a third Part. And so might Man or Woman of 16 Years old. But Land which they (according to the Civilians) called immoveable Goods, no Man^a amongst them might dispose of by his Will.

In some other Parts of France^d as in *Champain*, they disposed both moveable and immoveable, that is, Goods and Lands, according to the Civil Law.

The Civil Law Custom they called *Lex Romana*, the other *Lex Barbara*.

Our Saxon Ancestors by direction of their Clergy, who chiefly affected the Roman Manners, seem also to have observed the Civil Law in making of Wills both in substance for disposing Lands and Goods, and much in the form and ceremony of making and publishing the same.

As *Carolus Magnus*^e in France disposed the Lands of his great Dominions between his three Sons, *Lewis*, *Pepin*, and *Charles*; by his last Will: So by his Example King *Ethelwulfus*^f here divided his Lands by his Will between his three Sons, *Ethelbald*, *Ethelred*, and *Ælfred*.

King *Ælfred*^g in the like manner disposed both his Lands and Goods by his Will now extant. And many other Saxons^h by their Wills in writing, bequeathed Lands and Goods with their Bodies unto Monasteries. That herein they followed the Civil Law is manifest by the Saxon Will of *Birtrick*ⁱ and *Elfsuith* his Wife, made about the Year 980 (according to the manner of that time) by them both jointly.

First it seemeth to be made in *Calatis Comitibus*^k, that is, in an Assembly called together for that purpose. Then whereas the Civil Law^l requireth necessarily seven Witnesses, here were a dozen, least it might be defective in that one was a Woman, and^m some other under age or Bond-men.

The Disposition of Lands as well as of Goods, is by the Civil Law, and therefore the course is more solemn. Which also this well observeth both for disposing Land and Goods and also for the solemnity of the Course. But most evidently it appeareth to be according to the Civil Law, in that the Man and his Wife join both together in it, which was neither in use nor resolv'd to be good till the Novel Constitutionⁿ of *Theodosius* and *Valentinian* did authorize it.

After this Constitution that kind of Testament became so common, that *Marculfus*^o, who lived about the Year 660. hath left unto us an especial Formula or precedent of it as it was then in use in France. And saith in it, that it was *ut Romanae Legis decrevit Auctoritas*. And concludeth it with an imprecation or Curse against such as should violate it, as doth also the Will of *Birtrick*.

With the like solemnity of Witnesses (eight in number besides a Lady) did *Elfere* another Saxon before *Birtrick*, bequeath the Town or Land of *Snodland* to the Church of *S. Andrews*.

Of the Probate of Wills or Testaments.

After the Will was thus composed, the Roman use^p was to have the Testator and Witnesses to subscribe it, then binding it up close with thred, to

^a *Cust. reform. du Norman. Art. 414.* ^b *Art. 420.* ^c *Art. 418.* ^d *Art. 415.* ^e *Gloss. ad Art. 412.*
^f *Engolism. in vita Carol. p. 81.* ^g *Testam. Alfredi in Angl. Norm. p. 22.* ^h *Testam. pradiet.* ⁱ *Lib. Ramf. §. 130.* ^j *Lamb. Itin. Cantia. p. 492.* ^k *Instit. de test. ord. §. ut.* ^l *Ibid. §. sed cum.* ^m *Ibid. §. Testes autem.* ⁿ *Constit. Novel. lib. ix. tit. 4.* ^o *Formul. lib. 11. cap. 17.* ^p *ff. de Tab. L. Exhib. Si quis-*

seal it with their Seals, which upon producing of it they or many of them were to view and acknowledge before the *Pretor* or Judge. And then *rupto Lino*, the thred being cut, it was opened and published, and Copies of it delivered to the Parties under a publick Seal, the Original remaining in the publick Register.

The ancient manner of opening, publishing, or as we call it, proving of Wills before the *Magister Censur*, is described by *John Fabri*. But nearer to our purpose is that in the *Formula* of *Marculfus* of a Will proved in a City or Corporation before the Magistrate there, or of a Town before the *Defensor Plebis*.

For a Will by the Civil Law and the use of our neighbour Nations might be proved before divers Officers and in divers Places.

We already mention the *Pretor*, but *Justinian* the Emperour ordained that in *Rome* none should be opened save by the *Magister Censur*. In the Provinces by a Constitution of *Theodosius*, the *Rectores Provinciarum*, and where the access to them was uneasy, there Donations and Wills made in Cities and Corporations might be exhibited and proved before *Magistratus Municipales*, the Magistrates there; in other Towns before the *Defensor Plebis*. According to these two last are the *Formula* of *Marculfus* and another in *Brissinius*.

From these Constitutions of the Emperors, grew the various manner of Probate of Wills amongst us in ancient time.

With the *Magister Censur*, being proper only to the City of *Rome*, we have nothing to do: But as we were once a Province of the Empire, so our Ancestors received and held the manner of Provinces: For the *Rectores Provinciarum*, which with us were the Earls of the Counties, had the Cognifance or Probation of Wills, as shall by and by appear. So also had divers of our *Magistratus Municipales*, Magistrates of Cities and Corporations: As that which I am best acquainted with my Neighbours of *Lenn Episcopi*, now *Kings Lynn* in *Norfolk*. And instead of the *Defensores Plebis* in an ordinary Town, the Lord of the Town or Manor both had, and hath that Privilege with us in divers Places.

All this while there is no mention of any Ecclesiastical Person, which we must now look into.

The fourth Council of *Carthage* ordained, that *Episcopus tuitionem Testamentorum non suscipiat*; and this Canon *Gratian* has taken into the Body of the Canon Law, whereto the Gloss saith: *Tuitionem, id est, apertionem, scilicet coram eo non aperiantur, sed coram Magistro Censur*. C. de Testam. l. Consulta. And tho' it addeth *vel dicatur quod non sit Advocatus ad tuendum Testamentum*; yet that seemeth an idle Interpretation: for tho' *Epiphanius* maketh mention that Bishops in old time judged Causes, yet it was never known that they pleaded Causes. But it is apparent, that the Clergy-men in those days took upon them to prove wills even in *Justinian's* time, who flourished *An. Dom. 530*. And therefore he prohibited them non only by a Constitution, but also by a Mulet of 50 Pound Weight of Gold, saying, *Absurdum est namque si promiscuis actibus rerum turbentur Officia, & alii creditum alius subtrahat; ac precipue Clericis, quibus opprobrium est, si peritos se velint Disceputationum esse Forensium ostendere*.

But here we see that the Clergy even in those days, had set their foot upon the business; and I suppose that since that time they never pulled it wholly out again. It is like the Eastern Nations adhering to the Empire

^a Paul. Sent. lib. 4. tit. 6. Bign. p. 566. ^b Gloss. Cod. de Testam. l. 18. ^c Lib. ii. cap. 37. & 38. ^d ff. fo. 168. Cod. Instit. de Testam. lib. 23. f. 554. ^e Cod. Theod. lib. 8. ^f Cap. VIII. ^g Cod. de testam. lib. 23. fol. 354. ^h Clericis ut D. L. 5. de Episcopis & Cleri repetita.

did observe it: But the Western being torn from it by the Northern Nations Saxons, Goths and Normans, took and left as they thought good.

Raccardus King of the Western Goths about the Year 594. tho' he retained the manner of the Civil Law in making Wills; yet he ordained that they should be published by a Priest as formerly they had been.

His successor Chindavinsus about An. 650. making a Law about a Military Will, ordained, that it should be examined by the Bishop and Earl, and ratified by the Mand of a Priest and the Earl.

As the Northern Nations I speak of, the Goths, the Saxons and Normans, were of Neighbour and Affinity in their Habitation, Language, and Original, so were they also in their Laws and Manners.

Therefore as the Goths trusted to their Priests with the passing of Wills, so did the Normans; their Custom and Law^a was, that *Tout testament doit estre passé par devant le Curé, ou Vicaire, notaire ou tabellion en la présence de deux temoines idoines de xx. ans accomplis, & non legataries*. That all Testaments shall pass before the Curate or Vicar, &c. where the Commentary^b noteth, that it must be the Curate or Vicar of the same Parish, where the Testator dwelleth: And that notary hath been adjudged to be a Notary Apostolick or Ecclesiastical. So that the Business was then with them wholly in the Hands of the Clergy.

This ancient Norman use liveth to this day in many Towns of England. The Parson of Castle Rising in Norfolk hath the Probat of Testaments in that Town: And so hath the Parson of Rydon, and the Parson of North-Wotton in North-Wotton.

To go back to our Saxon Ancestors. I see they held a kind of *isomorphism* or Similitude of Laws with their Brethren the Goths and Normans: And tho' I find no positive Constitution among them in this point; yet *ab actis & judicatis* (the supporters of the Common Law it self) we may perceive what their Custom and Law was.

Elfric who lived before the Year 960. having made his Will^c did afterward publish the same before Odo the Arch-Bishop of Canterbury, Elfy the Priest of Croydon, and many other.

Birtrick and his wife in no long time after declared^d their Will at Me-pham before Elfstane Bishop of Rochester, Wine the Priest, and divers other. See a MS. Law^e of King Alured the Great who flourished An 880. *De eo qui Terram testamentalem habet, quam ei Parentes sui dimiserunt: ponimus ne illam extra Cognationem suam mittere possit, si scriptum inter sit Testamenti, & Testes quod eorum Prohibitio fuerit, qui hanc imprimis acquisiverint, & ipsorum qui dederint ei ne hoc possit, & hoc in Regis & Episcopi Testimonia recitetur coram parentela sua.*

It is said in the Civil Law^f that the Declaration of a Testament before the Prince *omnium Testamentorum solemnitatem superat*. Here the Bishop is joined with the King in cognisance of the Testament by the copulative &, but Mr. Lambard (tho' I confess it agreeth not with the Saxon) maketh it in the Disjunctive, *coram Rege aut Episcopo*, as if it might be before either of them. The Saxon^g is on Lyninger^h Birceoper goprenyffe, in Regis & Episcopi Testimonio. Be it one or the other it cometh much to a reckoning, for the Presence of the King was then represented in the County by the Person of the Earl of the County, as it is this day in his Bench by the Person of his Judges. And the Earl and Bishop sitting together in the Court of the County did (as if the King and the Bishop had been there) hear jointly, not only the Causes of Wills spoken of in this Law, wherein the Bishop had special interest, but other also that came before them: And therefore in those days the

^a Wisigoth. lib. 11. tit. v. l. 12. ^b Wisigoth. lib. 11. tit. v. l. 13. ^c La Coust. refor. Art. 412.

^d Verb. Notare ou Tabellion. ^e Testam. Birtr. Itin. Cant. p. 496. ^f Ibid. p. 492. ^g LL. Alur. c. 37.

^h Cod. de Testam. l. 19. omnium. f. 352. ⁱ LL. Alur. c. 37.

Extent of the Earl's County and the Bishop's Diocess had but one Limit.

To this purpose is the Law^a of King *Edgar*, Cap. 5. and the like of *Canutus*^b, Cap. 17. *Comitatus his in anno congregatur, nisi plus necesse sit, & in illo Comitatu sint Episcopus & Comes, qui ostendant Populo & Justitiam Dei & Rectitudines Seculi.* The Saxon is, 7 ðære beon ðære 7cype Biscop 7 re Ealþorman. Let the Shire-Bishop be there and the Alderman; so then they called the Earl.

Thus both Ecclesiastical and Secular Causes were decided in the County-Court; where, by the Canons of the Church the Ecclesiastical Causes were first determined, and then the Secular: And many Laws and Constitutions^c there be to keep good Correspondency between the Bishop and the Earl or Alderman.

And as both kind of Justice were administred in the County Court, so were they also in the Hundred Court; in which course they continued in both Courts till the very time of the Conqueror, as it seemeth, and almost all his time after.

But about the eighteenth Year of his Reign, by a Common Council of the Archbishops, Bishops, Abbots and Princes of the Kingdom, (which we now call a Parliament) he ordained, as appeareth in a Charter^d of his then granted to *Remigius* Bishop of *Lincoln*, *De nullus Episcopus vel Archidiaconus de Legibus Episcopalis amplius in Hundred Placita teneat, nec Causam qua ad Regimen Animarum pertinet ad Judicium secularium omnium adducat; sed quicumque secundum Episcopales Leges de quacunque Causa vel Culpa interpellatus fuerit, ad locum, quem ad hoc Episcopus ei elegerit & nominaverit, veniat, ibique de causa vel culpa sua respondeat; & non secundum Hundred, sed secundum Canones & Episcopales Leges, rectum Deo & Episcopo suo faciat, &c.*

What ensued upon this, and how the Bishop and Earl divided their Causes and Jurisdiction, appeareth not: That of Wills belonged either wholly to the Earl (as *Rector Provincie*) by the Constitution of *Theodosius*, or as much to the Earl as to the Bishop, by the Laws of King *Edgar* and *Canutus*. But the subsequent use must inform us what was then done upon it. And thereby it seemeth that all went wholly to the Bishop and Clergy, and that the Saxon Custom was changed, and the Norman introduced: And that the Name of Court Christian or Ecclesiastical sprung not up, or was heard of, till after this Division.

For now the devising of Lands by Will after the Saxon manner was left, and the Goods themselves could not be bequeathed, but according to the use of *Normandy*. A third part must remain to the Wife, a third part to the Heir (or Children) and a third part the Husband might dispose by his Will. The Norman manner appeareth at large by their Customary, and the English at that time briefly toucht by *Glanvil*^e.

But let the Will, and the matter thereof, be what it would; it seemeth the Infination, Probate, and Cognisance of it, belonged generally now unto the Bishop and Clergy; tho' I must confess it be hard to find manifest proof thereof in those ancient Days of the Conqueror and his Sons.

We must therefore discover as we can; and very material (in my Understanding) to that purpose is the Testimony which I find in the ancient Laws^f of *Scotland*, compos'd by the commandment of *David* their King, who lived long in the time of King *Henry* I. Son of the Conqueror, and of King *Stephen* the Conqueror's Grand-child. For those Laws have that similitude with ours of that time deliver'd by *Glanvil*, as that in effect they be much what the

^a Edg. LL. Secul. ^b Canut. LL. Secul. cap. 17. MS. ^c Longob. lib. 11. tit. 53. Capitular. lib. 14. tit. 71. ^d Inter privil. Eccl. Lincoln. indulta, & à Ric. II. per Inspex. confirm. anno ejus secundo. Ch. 2. m. 2. n. 4. ^e Lib. VII. cap. 5. ^f Reg. Maj. lib. 1. cap. 2. §. 1.

fame, *mutatis mutandis*, &c. and very often *totidem verbis* with *Glanvil*.

It is there said under the Title *De Causis ad Ecclesiam spectantibus*, &c. *Placitum de Dotibus & de Testamentis ad Forum Ecclesiasticum pertinet*. Dower was then thought to belong to the Ecclesiastical Court, because it was a Dependency of Marriage, which doth belong to that Court. And the Rule was, *Qui est Judex in principali est Judex in accessorio*. But to our purpose it is plain, that Testaments were then *de Jure Ecclesiastico* in Scotland, and doubtless even then also in England.

For not long after, (in *Henry II*'s time) *Glanvil* himself doth testify as much, saying, that where the Testator nameth no Executor, his next of kin *possunt se ad hoc faciendum ingerere*, and might have a Writ to the Sheriff (in the form there recited) against them that detained any of the Goods; and then addeth: *Si quis autem Auctoritate hujus Brevis conventus dixerit contra Testamentum, scil. quod non fuit rationabiliter factum, vel quod res petita non fuerit, ita ut dicitur, legata; tunc quidem Placitum illud in Curia Christianitatis audiri debet & terminari*, &c.

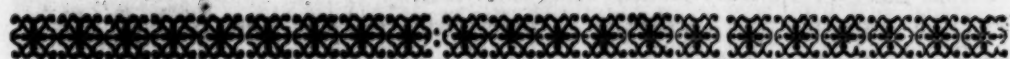
At this time Ecclesiastical Jurisdiction was grown to that exorbitant height and latitude, that they neither doubted to convent the King himself to their Synod, as *Henry* Bishop of *Winchester* and Legate did King *Stephen* to the Synod of *Winchester*, nor to put him to corporal Punishment under the Name of Penance, as the Monks of *Canterbury* did King *Henry II*. by whipping him. In ordinary matters therefore no doubt but they extended their Jurisdiction very far: Yet all this while was not the *Decretum Gratiani* come into the World.

In *Henry III*'s time, *Bracton* expresseth Wills and Testaments to belong to the Ecclesiastical Jurisdiction, as *Glanvil* had done before in *Henry II*'s and the Scottish Laws in *Henry I*'s time. *Si de Testamento oriatur Contentio, in Foro Ecclesiastico debet Placitum terminari; quia de Causa testamentaria (sicut nec de Causa matrimoniali) Curia Regis non se intromittit*, &c.

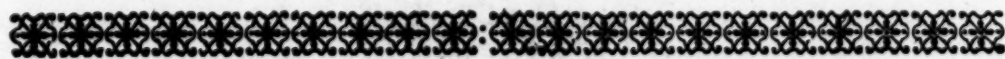
I am come now to the Lists of the modern Common Law, and I dare venture no further.

* Lib. VII. cap. 7. Magn. Cart. Hen. I. cap. 9.





ICENIA:
SIVE
NORFOLCIÆ
Descriptio Topographica.
Ab *HENRICO SPELMANNO* Eq. Aur.





ICENIA

21 V E

NORFOLCIE

Descriptio Topographica

Ab HENRICO SPERMANNO Ed. Am.



ICENIA.



Icenii nostri, quibus nixi sunt initii; & unde Nomen ascrive-
runt; nec proditum reor à veteribus, nec rimatum feliciter
à recentioribus. Caesar (hospes) *Cenimagnor* vocat: Pto-
lemæus (altero velat orbe dislitis) *Simenos*: Tacitus, Præ-
fecti Britanniae Gener, & diuturnus in Gallia Belgica Magi-
stratus, certiusque igitur insequendus, *Icenos*. Mitto, qui
Tigenos; sine dubio perperam.

Icenorum
Nomina.

Non à Rege aliquo nuncupatos, cum *Camdeno* censeo; sed nec ut illè à
forma loci, quam *Britanni* (inquit) *Iken*, id est, Cuneum vocant: Certe
Ptolemæi Tabula & comperta ratio, quadrangulam potius justam, quam cu-
neatam faciunt. Mallem ego ab *Ise*, Fluvio celeberrimo, *Britannis Ichen*, to-
tam Regionem brachiis longe divaricatis transeunte, deducendos. Sic apud
Asiatios, Indi ab *Indo*; apud Græcos, Mæones à *Mæonia*; apud Scythas,
Alani ab *Alano*; apud Germanos, Alsati apud *Alsa*; apud Gallos, Sequani
à *Sequana*, Fluminibus. Sic in ipsa Anglia, Derbientes à *Derwent*; Lanca-
strenses à *Lan*, alias *Lon* Fluvio, ut ipse agnoscit *Camdenus* noster; Nor-
thumbrenses ab *Humbro*; & Wiltoniæ Comitatus à *Guillo*, i.e. *Willo* Fluvio,
ut perhibet Wigorniensis. Nec obest [s] in [e] migratio, cum in voce con-
servetur sonus, & Ptolemæo litera, quam alii tamen in [g] mutant. Soliti
autem sunt Britanni pro Græco *o*, *ch* ponere, ut *Ichen* pro *ion*, *Soch* pro *ov*,
i.e. Sue, *Buch* pro *βuc*, i.e. Bove.

Icenorum
Derivatio.

Fluvii Nomen ab *Ise*, alias *Iside*, Gentium Dea, sortitum videatur. Priscis
quippe in more fuit, Sylvas, Montes, Fluvios Numinibus consecrare, eorum-
que appellare Nominibus. Britannos vero præ Diis aliis *Cererem* & *Proser-*
pinam (quæ & *Isis* dicitur) inferna coluisse Numina Strabo perhibet. Hinc
infernales sui Ritus, & nocturna Sacra. Nox Diem ducit; & per Noctes, die-
rum seriem; per Lunas Mensium; per Hyemes Annorum numerant. Sic ho-
die à *Seven-night* pro vii diebus, à *Fort-night*, quasi *Fourteen-night*, pro
xiv diebus dicimus. Et majores nostri xx, xxx, xl *Winters*, pro totidem
annis recitabant. Hyemem autem ideo consecrabant Infernalibus, quod re-
rum Semina sub hoc tempore ab eisdem existimabant conservari. Hinc & in
Fluviis nostris celeberrimis, crebrum *Isis* Nomen, alias coelibus, ut *Brigantum*
Isis; *Isis Icenorum*, & *Isis Dobunorum*: alias conjugis, ut *Tham-isis*, *Is-u-*
rium, & hujusmodi.

Ise Fluvi-
us unde
dislitis.

Sed *Icenia* videamus Terminos; quibus includit *Camdenus* *Norfolciam*,
Suffolciam, *Cantabrigiæ Comitatum*, & *Huntingtoniæ*. Quod ut non pro-
betur facile, ita sat difficile est ad refellendum. Ptolemæus *Simenos* ponit in-
ter *Catiuchlanos* & *Metarim* *Æstium*, versus Boream; *Trinobantes* versus
Austrum; *Dobunos* & *Coritanos* versus Occidentem; & Germanicum Ocea-
num versus Orientem. Sed quibus hi desuntur invicem finibus non exponit.
Camdenus *Coritanos* locat, ubi Ptolemæus in versis sedibus *Catiuchlanos*; me-
diterraneos scilicet ubi hic maritimos; & è contra. Auctorem non laudat; prop-
ter viri tamen eminentiam inficias non ibo; ne crassa versans caligine, falsis
illudat imaginibus. Haud tamen censeam priscos illos Britanniae Populos adeo
certis & definitis Limitibus determinatos, cum Scriptores Antiqui Tractum po-
tius, quo versati sunt obscuriores populi, quam Tractuum Limites designaverint.

Icenia
Termini.

Et qui fieri possit, ut hodiernis Comitatum Finibus dividerentur olim Britanni veteres, cum Comitatus ipsi à Saxonibus postea, & plerumque ad Aluredum non ultra 800 abhinc annis, dimetati sint? Reor equidem præscarum Gentium Terminos, præsertim barbararum, instar magni Æstuarii, nunc expansiores fuisse, nunc contractiores, juxta potentiam & deliquium suorum Principum: Sic Londinum ipsum, totius Insulæ Metropolin, alias à veteribus in *Essexia*, alias in *Middlesexia* vidimus collocatam.

Everfa Britannia, divisæque à victoribus Romanis in quinque Ditiones citra Vallum quod instituit Hadrianus, restituitque postmodum Severus Imperator (scil. in Britanniam primam, Britanniam secundam, Flaviam Cæsariensem, Valentiam, & maximam Cæsariensem) cessit Icenorum hic tractus (ut Camdeno placuit) in Flaviam Cæsariensem. Celebre vero Antiquitatis monumentum, quod *Notitia utriusque Imperii* nuncupatur, in — Vicariorum Britanniarum Insulam ponens; Britanniam secundam locat (consulto dixeris an fortuito) ubi Ptolemæus *Trinobantes & Simenos*.

Sed ejectis tandem Britannis, cum reliquiis Romanorum, descendit *Flaviae* nomen, pariter & *Icenia*, ad Inferos, vocaturque à Saxonibus Tractus iste *Eart-Engle*, i.e. *Anglia Orientalis*, quod Gens Anglorum cum Saxonibus è Germania venientium, suam hic obtinuissent Sedem, parte alia circa Humbrum incolente. Quibus tamen Limitibus clauderetur, cum nec adhuc in Comitatus distincta esset Insula, satis videatur ambigendum, Dimensionem licet satis habeamus explicatam. In antiquissima enim Descriptione omnium Prædiorum ex Australi parte Humbri Fluminis, *Eart-Engle* perhibetur 30000 Hidas demetiri. *Hidam* Beda *familiam* vocat, & vulgus alias pro 100 & 120 Acris terræ æstimavit. Nec semper tamen definite; sed Normanni postea *Carucatam* appellarunt, Scriptores mediæ sæculi *Coloniæ*, & Romani olim *Villam Rusticam*.

Cum vero Aluredus, Rex (sine invidia dixerim) inter Principes optimos laudatissimus, Angliam totam ad præscarum Germanorum politiam in *Shiras*, quas plerique Comitatus; *Centurias* (quas Hundreda jam & Wapentachia) & *Decanias* (quas *Fribergas* vulgo & *Tithingas* appellamus) divisisset; concluditur East-Anglorum Ditió trium Shirarum extensione, Norfolkicæ, Suffolciæ, & Cantabrigiæ. Non dico, *Comitatuum*, quod ad unum omnes sub hoc seculo pertinere Comitatum; siquidem ut ad unum Episcopatum: Comitatus enim plures sæpe obtinuit Shiras, & eisdem quibus Episcopatus finiebatur terminis; quod Episcopus & Comes simul confidentes, Populo Jus dicerent; hic humanum, ille vero divinum.

Hæc, pulsus Britannis, inter advenas Saxones conditio fuit; donec erectam in Monarchiam Aluredus, Angliam totam in certas portiones dissecuit; quæ à factò, *Shires* hodie usque appellantur. Qua partitione, licet antiquos Britannorum Limites in quibusdam observasse non est dubium; in aliis tamen longius discessisse certum est. Ideoque — Sectiones Britannicis respondere non erendæ sunt. Deposita autem controversia (ut certa nostro argumento scena statuatur) concedamus hodiernos *Norfolciæ*, *Suffolciæ*, *Cantabrigiæ*, & *Huntingtoniæ* tractus, *Icenorum* ambitu contineri.

Redacta Heptarchia in Monarchiam, Canutus Magnus Angliæ, Daniæ, Norwegiæ, aliarumque Gentium Borealiū Rex, Monarchiam hanc in Tetrarchiæ speciem disposuit, viz. *West-Saxonie* Regimen, sibi met; *East-Angliam* (cujus Duces, *Ulfkettelum* Patrem & *Athelwardum* Filium, in Eslenduni proelio trucidaverat; quæque jam Norfolkiam & Suffolciam complecti dicitur) Turkillo Comiti; *Merciam*, seu partem mediterraneam, Edrico Principi perfido; & *Northumbriam* Henrico designavit.

Sic fit East-Anglia, *Anglo-Dania*; & cum novo Populo novas suscipit Leges, quæ à conditoribus Dene-laḡ, i.e. *Lex Danorum*, appellatus. Prioribus igitur duabus (i.e. *per-t-Saxon-laḡ* & *Mencen-laḡ*) accedens, jam tertia *regni* constituit,

stituit, è quibus cum Edwardus Confessor unam ex omnibus deduxisset, *Communemque* inde appellasset; Gulielmus I. à Danis & Norwegis oriundus, Danorum illam profundiorē & honestiorem aliis fuisse contendens, eam omnino suscitaverat; si vehementissimis Magnatum deprecationibus non fuisset remoratus. Ab hoc vero tempore ita claruerunt Norfolcienses pietatis studio & splendidis ingeniis; ut hinc in Legum scientia primas obtinentes; quolibet ævo, Regni Tribunalia scientissimis Judicibus, Subsellia argutissimis Jurisconsultis ornarunt: illinc rerum cœlestium ardore conciti plus minus jam 700 Ecclesias in hoc tractu; & ultro 70 coenobia (quot in simili spatio nusquam inuenies) condiderunt. Vivit sat honeste ipsa Plebecula; cujus tamen rusticitatem famoso derisit carmine (quod aliquando vidimus) sub Johannis Regis exitu Monachus quidam Petroburgensis; sic exordiens:

• *Edictum exiit Augusto Cesare,
Qui mittens nuncios, jussit describere
Mundi Provincias summo cum opere.*

Erat vero tunc quidam familiaris ejus Norfolcianus, Jo. de S. Omero, cujus Nominis Familia in *Well* juxta *Wisbech* Sedem habuit, & foemina Hæredē ad *Beaupreos* transit. Ille Monachi vesaniam indignatus, patrias edit vindicias, numeros reddens numeris, & rythmos rythmis: opusculum inscribit *Norfolciana Descriptionis Impugnacionem*. Sic inchoatur: *Edictum fingitur factum à Cesare*.

Sub Rege autem Johanne^b novas suscepisse periclitabatur Norfolcia & Suffolcia Incolas. Has enim Provincias ipse, ut dicebat, per Chartam suam *Hugoni de Bones* dederat; qui cum 60 millia armatorum in auxilium ejus comparasset, unā omnes à Pelago sunt absorpti, & cadaver Hugonis cum merforum multitudine tam Foeminarum & Infantum quam Virorum, *Gernemutæ* ejectum. Multitudo aërem ipsum inficiens Morbum & Pestem provincialibus intulit; quos ut viva statuerat extinguere, & Sedes hic sibi perpetuas comparrare, voti quodammodo compos efficitur.

E quatuor his Regiunculis; mediterraneæ sunt omnino *Huntingtoniensis* & *Cantabrigiensis*: maritimæ, pro dimidio, *Norfolcia* & *Suffolcia*. Cœlum omnibus velut unum, mite satis & tenue; sed maritimis refrigerantius. Solum unicuique proprium; sed mediterraneis pinguis: *Huntingtonia* Pascuis aptior; *Cantabrigia* Cereri; *Suffolcia* Lacte scater & Caseo; *Norfolcia*, Vellere est nobilior. Mediterraneæ tantum ex humo vivunt. Maritimæ autem, cum *Thetimi* habent viciniam, penū præterea illic funguntur ditissima. *Huntingtonia*, leviter montana est; *Cantabrigia*, tota campestris; *Suffolcia*, Sylvis confita; *Norfolcia*, omnium particeps.

Singularum fines in paludibus coeunt; ubi commune omnibus Flumen unum est, amplum, piscosum, & navigationi commodissimum. *Ousam* dicunt sed corrupte (ut mihi videtur) pro *Isidem*. E paludibus damnum sæpè omnes ferunt; lucrum tamen annuū non exiguum; præter ingentem vim Piscium & Aquatilium. Fluvius iste mediterraneis multis regiunculis tanquam via lactea est; quo merces & alia vitæ necessaria copiose inferunt & deferunt: ejusque in ostio, instar clavis, *Lenna* fedet. Aliud Flumen celebre *Huntingtonia* non habet, nec *Cantabrigia*: habent vere tum *Suffolcia*, tum *Norfolcia*; quæ & cæteras, Rivulorum multitudine, antecellit. Succedit proxima *Suffolcia*. Indigere videtur *Cantabrigia*; sed magis tamen *Huntingtonia*. Metallum nulla effodit, nec Carbones; nec structiles quidem Lapides; si non *Norfolcia*. *Eliensis* Insula in Paludibus fedet; contineturque sub *Cantabrigiæ* appellatione.

^a Bal. 261. ^b Walling. Ypod. in *An*, 1215. p. 462.

Marflan-
dia.

Marlandia (quæ ex nomine cognoscitur, palustre solum) 30000 metitur jugera, inter VII. Villas distributa. Aggere cingitur elatiori, ab Australi plaga recentium undarum impetum, à Boreali marinarum, cohibente. Eorum latus fortius rodit Isis Fluvius; Occiduum, furens à Vulturno æstuarium. Incolis hinc perpetua formido & periculum; sed in aggere communis salus & fiducia. Singulas tamen Villas singuli claudunt aggeres alii, ne submersa una pereant cætera. Bis sub nostra memoria generale passæ sunt diluvium, Aquarum dulcium *An. Dom. 15*—; salinarum, *An. 1613*. qua (ut mihi inter alios regio diplomate designatos) Pagensium juramento innotuit, damnum supra 42000 libras illatum esse. Aggerem quippe non ut alias trajecit Pelagus; sed transiit altius toto pede; quod ne indies faciat miraculo prohibetur & divina misericordia: Octogenis enim cubitis supra Britanniam intumescere æstus, Pythias Massiliensis auctor est. O bone Deus, qui Mare nobis ut Israelitis olim, murum dedit in perpetuum suæ bonitatis testimonium!

Solum hic omnino pingue, sed robustum: Pascuis igitur atque Pecore lætum magis quam in Cerere: Fossis & elicibus, quibus centum & undeni incumbunt latericii Pontes & Ponticuli, vermiculatim dissectum: cum ad educendum inimicum imbrem, tum ad inducendum expetitur. Fontem enim nullum habet neque Rivulum: nec talpam alit nec Soricam.

Walsoka.
Waltona.
Walpole.

In Marlandia parte extrema, versus Occidentem, sitæ sunt, *Walsoka*, id est, Immunitas juxta Aggerem: *Waltona*, id est, Villa ad Aggerem: & *Walpola*, quod est, Gurgis prope aggerem; *Wall* enim à *Vallo* ductum, Aggerem significat, & per translationem, Murum. Pertinebant olim priores duæ ad Abbatem Ramesiensem. *Waltona* scilicet, ex dono Albredæ viduæ Eustacii de *Stel-leia* sub Henrico I. *Walpola* vero ad Ecclesiam Eliensem, natalitis clara S. Goderici Heremite, cujus vitam & miracula Parisiensis plurimè decantavit.

Terring-
ton.
S. Maries.

In viciniis jaceat *Terrington* & *St. Maries*; hoc familiæ Cervillorum, qui de Capra-villa olim dicebantur, & pro crista Capram emblemata nominis detulere antiquum, patrimonium. Sed defunctis nuper *Henrico Cervil* Equite, & filia sua, in Cobbarum scribitur hæreditatem. Illud Howardorum, qui hoc olim tractu maxime claruere, vetus sedes, & ad ingentia conservatrix felicissima. Splendida etiam hic Ecclesia cujus aliquando Rector *Edmundus Gundevill*, Collegium sui nominis extruxit Cantabrigiæ sub *An. Dom. 1348*.

Tylney.

Tylney-
Smeeth.

Adjacet *Tylney*, veteris utique Tilneiorum familiæ radix; quæ per filiam & hæredem Frederici Tilney Equitis amplissimi, in Howardianam stirpem tertio hinc seculo confluent, auctiorem eam multo reddidit. Hic se expandit insignis arca, quæ à planitie nuncupatur *Tylney-smeeeth*, pinguis adeo & luxurians ut Paduana pascua videatur superasse. Cum enim VII. villarum majora animalia quotidie recipit compascantia; oves tamen præterea plus minus 30000. alere perhibetur; nulla excedens extensione bis mille passus. Tuentur eum indigenæ velut Aras & Focos, fabellamque recitant longa petitam vetustate de *Hikifric* (nescio quo.) *Haii* illius instar in Scotorum Chroniciis, qui Civium suorum dedignatus fugam, Aratrum quod agebat, solvit; atreptoque Temone furibundus insiluit in hostes, victoriamque ademit exultantibus. Sic cum de agri istius finibus acriter olim dimicatum esset inter fundi Dominum & villarum Incolas, nec valerent hi adversus eum consistere; cedentibus occurrit *Hikifricus*, axemque excutens à Curru quem agebat, eo vice Gladii usus; Rota, Clypei; invasores repulit ad ipsos quibus nunc funguntur terminos. Ostendunt in coemeterio Tilniensi, Sepulcrum sui pagilis, Axem cum Rota intulptum exhibens.

Wigen-
hall.

Nec procul *Wigenhall*, antiquæ etiam cognomen stirpis. Magna hujus pars ante aliquot secula ita Aquis opprimebatur, ut neglecta generaliter occupantibus permitteretur. Multi igitur sedes sibi illic elaborantes, totam penè in aridum redegerunt; metuentesque jam tum ejici, in obsequium potentiorum

se tradidere, Censum & Tenuram Patrocinii causa agnoscentes; ut antiqua refert Inquisitio.

Extra Aggeris partem illam, quam *the Podike* vocant, scil. inter Isidem Fluvium & Municipium Eliensis Episcopi, quod à situ in Occidentali Glarea *Wise-beach* dicitur (*Wise* enim Saxonice, ut in *Wisegethorum* nomine, *Occidentale* sonat) *Well* habetur, id est, Puteus. Cum enim circumclusa jam Marlandia, aquarum impediretur dilatatio, huc se recipientes, ut in Puteum, superficiem late opprimebant. Nobilissima fit interea Piscatura, quam Ailwinus Dux East-Angliæ, & totius Angliæ Aldermantius, cognatus Regis Edgati, & Fundator Cœnobii Ramesiensis (circiter *An. Dom.* 970.) eidem Cœnobio contulit, cum *Mansis & Toftis Piscatorum*, (ut verbis utar * Ramesiensis Codicis.) Maris sit (ut videtur) sub eadem conditione usque ad ætatem Regis Gulielmi I. qui Ecclesiæ illi confirmans Prædia, *Concedo* (b inquit) *in Welles 20 Homines Piscatores, singulis annis 60 milliaria Anguillarum* (i. e. *singulis Monachis singula milliaria*) *ibidem reddentes*. Emergit postea in villam celebrem, partim in Insula Eliensi, partim in Norfolkia (Fluvio dividente) sitam; Foro, Nundinis, & uberrimis Privilegiis sub Abbatibus Ramesiæ honestatam, dimidiique Hundredi fretam dignitate.

Wise beach.

Hic & *Beau-preovum* seu *de Bello Prato*, Sedes opulenta; præsertim cum excisis Monasteriis Ramesiense hic Dominium comparassent: quod cum reliquo suo Patrimonio *Edmundus Beaupre* Dorotheæ transtulit, quam ex Winteri aliquando suscepit Coniuge. Nuptaque ea Viro insigni Roberto Bell, qui Capitalis Baro Scaccarii effectus est, à Nepote ex Filio eorundem Roberto Bell, splendidi ingenii Equite, possidetur.

Beaupre-ovum.

Haud procul, in Lincolnensi tractu (nam Confinia lambens, memorabile Tydd. quod occurrit non præteream) Tydd conspicitur. Vicus pauper, sed cujus aliquando Rector (quem *Personam* vocant) *Nicolaus Breakepeare* à Roma in Norwegiam missus, eam prædicando ad Fidem convertit Christianam: & ab Eugenio III. Albanus ideo constitutus est Episcopus Cardinalis; creatusque est ipse post Eugenium [& Anastasium] *An. Dom.* 1154. Papa Hadrianus IV. Consulum hic ademit potestatem; quæ orbem olim, urbem hætenus administrasset; sibi retinens & Successoribus. Copiosissime in hoc & palustri reliqua Regione, [effoditur] Fomes terrea; quæ (à *Torff*, antiquo Rege Danico, ut prodit inventore) *Torff* etiam hodie appellantur; & Latine *Turbæ* à crassioris labii Forensibus. Mallem vero à Sax. *typp*, quod Cespitem notat, (V. Gloss. nost.) ni inventorem à re inventa dictum opinatus fueris.

Jam in Norfolkiciæ continentem transeundus est undosus noster *Plemmyrium*, h. e. *Isis* fluvius; qui semper equidem non est transeundus. Cum enim in dubus Æquinoctiis maxime tumeant marini Æstus, & potissimum (ut Plinius notat) sub Autumnali Plenilunio; hunc interdum è Mari prævolat adeo insanus Undæ Cumulus, qui se Fluvii Undis obviis non opponit, sed earum superficiem ita rapide superlabitur, ut velocitate equitantem superet, & furore quælibet occurrentia mergat & evertat. Venientem fugiunt Naviculæ, & ipsa aquatica Volatilia cum ingenti strepitu. Fluvii accolæ hoc à feritate *the Eagar* nuncupant, Matthæus Parisiensis (si recte intellexerim) *Hygram*: aliud reor quam Græcorum *Ὠπυρὸς*, sed non aliud quam Undarum ingens Cumulus, quem è lato collectum Mari in angustias Fluvii subito detrudit Æstus. In latiori enim ejus parte, non ita sævit. Taceo copiosam Fluvii Piscaturam; de eo tamen dicam, ut de Pergusa Lacu * Ovidius,

Isis Fluv.

Non illo plura Caister
Carmina Cygnorum labentibus audit in Undis.

Trajecto Iside, in Centuriam *Clacklose* pervenitur: quæ cum multis in eadem Villis ad Ramesiense olim spectabat Monasterium; hodie ad amplissimum

Clacklose Cens.

* *Sect.* 124. b *Sect.* 174. c *Met.* l. 5.

- Downham. Equitem *Jobannem Hare*; velut unum illius Abbatiae Cohæredum. Ad Pontis transitum primum adest *Downham-market*, à montano situ nomen habens; *Down* enim *Mons* est, *Ham* Habitatio: sed in membranis Regis *Downham-bithe*, i. e. Portus appellatur. Mercatum illic antiquissimum; nam ab Edwardo Confessore confirmatum reperit. Aspicit prope in aequali situ Domini sui ædes amplas & eximias, annuum circiter 15 — à *Nicolaus Hare*, Jurisperito ad *Stow-Bardolf* extractas, sed latifundiis egregie ditatas beneficio *Hugonis Hare*, Juris item periti, & Fratris Nicolai, qui coelebs excedens, 40000 lib. & eo amplius dicto Joanni ex Ricardo Fratre Pronepoti, & tantundem Hugoni, Domino Coleraine in Hibernia, ex Joanne Fratre Nepoti, Testamento dedit, me in eodem supravivore inter alios descripto.
- Turfs. Copiosissime in palustri hic tractu effodiuntur focales Cespites, quos *Turfs* appellant, Danorum nobis beneficium: A Torfo enim ipsorum Rege (qui floruit ^b *An. Dom.* —) inventos referunt, nomenque tenuisse inventoris.
- Subest *Wallington*, quod à Coningesbeis cum uxore transit ad Franciscum Gaudy, Capitalem nuper Civilium Placitorum Justitiarum; qui congesta huic plurima Dominia, Nepti suæ è Filia, Comiti Warwici desponsata, transmisit omnia. Filiam autem duxerat Gulielmus Hatton, Cancellarii è Sorore Nepos.
- West-Deerham. Paulum hinc in Euro-notum ad paludum marginem, sita est *West-Deerham* Villula, cupis memoranda *Huberti Walter*, Filii Harvei Walter, & Fratris Theobaldi Walter, Hiberniæ Pincernæ, à quo illustrissima Pincernarum Familia (quam *Butler* vocant) & Ormondia Comites (ut testatur ^c Charta Foundationis Coenobii de *Woney* in Hibernia) originem ducunt. Hic Hubertus sub Ranulpho de Glanvilla, illustri illo totius Angliæ Justitiario enutritus, evasit Archiepiscopus Cantuariæ, Cancellarius Regis Ricardi I. Legatus Papæ Coelestini IV. & totius etiam Angliæ Justitiarius. Miraberis tot in unum collatos Magistratus, præsertim si recte intellexeris quanti sub hoc seculo munus fuerit Justitiarum, Potestate scilicet omnes Regni Magistratus, Dignitate omnes superantis Proceres. Post Regem, primus universam complectebatur solus rem judicariam; Officium Capitalis Justitiarum Regii Tribunalis, Capitalis Justitiarum Civilium Placitorum, Capitalis Baronis Scaccarii, & in plerisque Magistri Pupillorum. Disposuit de Thesauro Regis, & in Regni arduis elato peragebat omnia supercilio. In absentia Regis, (quæ sub istis seculis crebro accidit) Regni Custos & Pro-rex salutatur. Tantos edidit Villa hæc obscura partus; qui tamen coactus est ab Innocentio IV. Fasces istos seculares deponere, & aratro Christi totus indulgere. Ad Cunarum vero decus, Coenobium in *West-Deereham* condidit: acceptique memor beneficii, instituit, ut pro anima Ranulphi de *Glanvilla*, patroni sui, preces hic perpetuo funderentur. Sed descriptis ab Henrico VIII. in Fiscum Monasteriis, *Thomas Deereham*, ut à Namine Sedem compararet, anno 33. ejusdem Regis hoc mercatus est; possidetque hodie post crebram Hæredum mutationem, è quinto Filio nepos ejus homonymus, Eques probus.
- Oxburg. Progredienti mox occurrit *Oxeburgh*, dictum (ut suspicor) pro *Ouse-burgh*, quod ad Isem Flavium, quem *Ouse* appellant, sit appositum. Sic *Oxeforde*, pro *Ouse-forde*. Nomen antiquitatem loquitur & eminentiam. Urbes enim, quas Britanni *Cestrias*, Saxones nostri & Germani *Burghs* vocant (ut rectè notat *Littletonus*) à *πύργος*, pro *Turri*. Haud tamen aio, *Burgas* apud nos omnes fuisse olim Urbes: nam vox alias *Manimen* quodlibet, & interdum *Montem* notat, à *πύργος*, ab assurgendo in altum [instar Turris.] *Oxburgus* igitur, si clarum aliquando oppidum non exstiterit, locum tamen munitum fuisse non est dubitandum: Hoc idem generaliter statuo de Villis omnibus, in quorum nomine *Burgh* deprehenditur. Sedes antique fuit *Weilandorum*, è qua Familia *Thomas Weilandus*, Capitalis Justitiarius Civilium Placitorum,

^a Lib. Ram. Scit. 215. ^b Chron. Lindenbrog. de Regib. Dan. ^c Warans in Woney perg.

18. Edw. I. in exilium mittitur à Parlamento. Postea venit ad *Tuddenhamos*, & deinde (Hæredis eorum nuptiis) ad *Bedingfeildos*, voleros aliquando in Aula Regia, & florentes hodie latifundiis: Duxerat quippe Edmundus Bedingfeildus Sororem Thomæ Tuddenhami Equitis amplissimi; & ex regni vicissitudine fortunarum suarum dispendiis metuentes, pactum ineunt obignatis tabulis, quod Bedingfeildus Signa sequeretur Edouardi IV. Tuddenhamus vero Henrici VI. & si belli alea Edouardo cederet, Bedingfeildus gratiam Regis Tuddenhamo compararet; sin è contra Tuddenhamus id præstaret Bedingfeildo. Victoriæ autem obtinente Edouardo IV. Bedingfeildus à Rege impetrat Tuddenhami patrimonium, sed Tuddenhamus ipse capite plectitur: clam hoc omne; nam utrique aliter capitale.

Hinc processit versus Oxburgum, quarto distantem lapide, velut Burgos conjunctura, fossa alia hodie locis aliquibus complanata; at Centuriam *Clacklose*, qua à Fluvii non cingebatur, muniens & determinans. Transiens autem juxta *Bicham-well* appellatur *Bicham-dich*; & devenit terminus Libertatum Ramefisensis Ecclesiæ ex parte *Clacklos* (ut *Newmarket-dich* Libertatum S. Ethelredæ ad Cœnobium S. Edmundi Buriensis pertinentium.) Sic enim Charta Henr. I. Sect. 215. *Sciatis me concessisse & confirmasse Ecclesiæ S. Benedict. de Ramefia, &c. Socam, Sacam — & omnes Libertates & omnia Placita ad Coronam meam pertinentia apud Baticastre & Ringsted & apud Clacklos-hundred & dimid. cum 64 Socomannis ad Hundredum pertinentibus, scilicet infra Bicham-dich, & apud Forum de Dunham, quod pertinet ad Winebodesham. Socomanni dicti sunt Coloni, qui Domino suo rem expediunt frumentariam: & cum in Cœnobio Ramefisensi 60 essent Monachi, qui totidem Anguillarum vescerentur milliariis, ut in *Well* supra memoravimus, hic singuli singulis supeditantur Socomannis, Cererem ministrantibus, quatuor Abbati reservatis.*

Quinto hinc lapide, in acclivi solo *Swafham* conspicitur; mercatu nobilis, quem à Rege obtinuit. Aerem exhibet à laudatissimo Medico laudatissimum. Splendidam item Ecclesiam, cujus Insulam borealem pedaneus condidit Aginator.

Descenditur hinc ad *Castle-Acre*, i. e. Castellum in Agro; quod è resurgente Monte late prospicit adjacentia. Prisca hic Sedes altera Comitum *Warennie*, quorum antecessor Wilhelmus de *Warena*, Forestarius Regis Gulielmi Conquestoris, & Gulielmus de Albeneiaco Pincerna ejus, fortes adeo luculentas in Occidua tulerunt Norfolkæ parte, cum Normannis divideretur, ut nulla pene Villa quæ ab Episcopo aliquo vel Monasterio non possideretur, quin in alterius eorum ditionem cessit. Testantur hoc antiqui Libri Feodales, qui alterutrum faciunt cujusque pene Villæ capitalem Dominum. Ad radicem Castellî (quod rudera tantum nunc ostendit) Gulielmus de Warena Comes Surrægiæ, An. Dom. 1090. condidit Prioratum in honorem beatæ Virginis Mariæ, Cellam vero futuram statuit Lewensi Monasterio, quod in Suffexia Pater ejus Gulielmus instituerat. Hic me monet locus, ut cum prudentia junctam [eorum] pietatem memorem, quæ non minus animæ salutem quam corporis consulentes, spiritalibus se Militibus contra Hostes spirituales æque ac secularibus contra seculares munierunt: Vix enim reperitur primaria sedes alicujus Magnatis, quæ Castello suo non subjunxit Cœnobium.

Claruit & contigua *West-acre* eximio Monasterio. Castellî Pomcerium & utriusque macraia Monasterii perlabitur Fluviohus elegans, *Nar* (quod aliis commune est Nomen) mihi ut videretur appellatus. Nam in procurfu statim occurrit *Narford* Villula, quasi Naris Vadum; & subinde *Narburgh*, quasi Burgus seu Castrum ad Narrem; cui belle convenit quod in Ligurinîs canitur,

— • *Meliori subdita Cælo*
Castra locat, gelidas vicini Naris ad undas.

dictum de *Narnia*, oppido Italiae, cui *Nar* Fluvius interluens nomen indidit; Tiberi conjungitur: exemploque monitus ego, Villas has nostras *Narniam ad Vadum*, & *Narniam ad Burgum* appellabo.

Narburgh

Quod de *Narburgh* prodiderunt incerti senes, ego posteris non refundam. Nec his fidem mendicabo, quæ Johannes Bramis Thetfordensis Monachus, circa ævum Henrici IV. (ut scriptura Codicis mihi suggerit) in historia Waldei Regis hujus tractus, decantavit. Sæpe tamen ejus nititur auctoritate *Joh. Caius*, in Antiquitate Cantabrigiæ Academiæ, & ab eodem succrevisse lumen mihi aliquando non negaverim. Laborare eum fateor Normannorum & Gallorum vitio, quo Romani suos deturparunt, fictitia veris commiscentes.

Narburghum refert, Civitatem fuisse sub ævo Uter Pendragonis, qui Rex Britannia floruit A.D. 500. Comiti cuidam Okenardo subditam. Eam à Waldeo fortiter obsessam, defendisse strenue septem mensibus Okenardum; noctuque sæpe exsiliem hostium multos interfecisse: & Florentium quendam Waldeo dilectissimum truculenter vulnerasse; Waldeum facto gravius irritantem: qui vindictæ acriter jam incumbens, Okenardum ad extremas adegit angustias. Fractum igitur, à Seneschallo suo admonitum fuisse ut se fugæ traderet. Si enim (inquit Seneschallus) te Rex Waldeus in manibus poterit habere, te ut Latronem faciet interire. Igitur cum Rex supervenerit, fugies de Civitate ista, & nos Castellum istud custodiemus, mittemusque ad Waldeum, & Vitam nobis & Membra obtinebimus ab eo, priusquam trademus illud in manus illius. Okenardus igitur, nocte superveniente, equo ascenso, egressus est; venit & Londonias ad Uther, &c. Seneschallus autem de salute pactus, Civitatem reddit, & Waldeus protinus delevit eam. Hæc & plura Bramis. Rerum illic antique gestarum, testimonium adfert ipse locus. *Sepimentum* vetus militare, ubi (si forte uspiam) Castellum Okenardi. Saxones *Burgum* vocant, & à Narburgo usque ad Oxburgum velut *Burgos* conjunctura protenta olim Fossa militaris, hodie licet locis aliquot complanata. Adde quod dum *Clemens Spelman* Eques, 30 abhinc annis, Hortum novum sub radice Burgi moliretur, multa humana ossa cum Armorum partibus aliquot sunt effossa.

Longe autem ante Normannorum adventum, inducto aratro, illud Civitatis exhalavit dignitatem. De ea enim, ut de Villula rusticana, sic Liber Angliæ Censualis, qui *Domesdei* appellatur, sub Titulis *Norff. Roger. & Hundred. de Grenehow*: *Nereburgh* tenuit *Ælwi* tempore Regis *Edwardi Confessoris*, modo *R. Vicarius Terræ pro Manerio*. Tunc [erant ibidem] 38 Villani, & post 28 modo similiter. Tunc & semper 10 Bordarii; modo tres. Tunc & post in dominio 3 carucatas [terræ;] modo 2. *Ælwi* iste videtur fuisse Danus, ut plerique sub hoc ævo Norfolcienses; ejectus autem à Rogero supradicto, putà Bigoto Normanno, cui amplam in hoc tractu partem Gulielmus Conquestor elargitus est. R. Vicarius terræ (uti censeo) fuit Robertus, aut Rogerus de Narburgh, qui Rogeri vice hoc Manerio fruitur, & splendidæ Narburgorum Familiæ (qui à Bigotis ipsum acceperunt, ut Castrum suum Norwicense feudali jure tuerentur) initium dedit. Deficiente vero sub Henrico VI. prole mascula, Ela filia Gulielmi de Narburgh *Shouldamo* primum, & secundis nuptiis *Henrico Spelman* collocatur, è quorum Filio juniore Johanne Spelman, secundo Justitiario Regii Tribunalis, valde (ut Fitz-herbert testatur) perito in Lege, Johannes Atnepos Narburgo potitur.

Marham.
Pentney.
Should-
ham.
Worm-
gey.
Middle-
ton.

A *Narburgh*, crebra ludens vertigine, ad *Marham* & *Pentney*, claram utramque suo Monialium Coenobio, tendit Fluvius. Deinde ad *Shouldham* Coenobio item ornatam, & exhausta propemodum antiqua Familia *Shouldhamorum*, Aquilam auream in coelo coerulæo gestantium. Mox allabitur *Wormgey* & *Middleton*, Castello & Coenobio Monialium aliquando insignem, ad Barones de Scales, & postea ad Comites Oxoniæ ex nuptiis spectantem. Illam Castello item & Coenobio decoratam, & à [Willielmo] de Warrenna primo Comite Surriæ, ad Bardolphos clarissimos Barones deductum.

Jam ad Lennum properans *Narra* Fluvius, domino suo Ifidi conjungitur, qui

qui Congunum Fluvium ex parte alia suscipiens, insignem in compitis stationem Oppido insigni expedit. Dicitur autem *Len* (nam corrupte *Lyn*) à Britannico *Lbyn* pro Stagno aut diffusis aquis, si vox eo traheretur (ut Camdenus voluit) non assentior. Saxonice plane existimo, & alias *Prædium*, alias *Feodum* significare. Sic apud Germanos hodie *Fanelben*, Prædium seu Feodum Baronis; & *Len-Episcopi* idem plane quod *Prædium Episcopi*. Contrahitur etiam vox Saxonibus nostris non tam Prædium significare, quam Prædium Ecclesiasticum; quod in aliarum Villarum nominibus sæpius deprehenderis, & Britannis ipsis (si hoc malueris) omnino similiter. Illis enim (si mihi non imponant) *Ter-Hen* significat terram Ecclesiæ, vel Ecclesiasticorum. Labitur & Vir optimus pede altero. Nam hoc dictum opinatur *Lennum Episcopi*; illud in adversa ripa, (vulgo *Old-Len*) *Lennum Regis*: cum *Len Regis* idem sit à tempore Henrici VIII. quod eousque *Len Episcopi*. Permutante enim Rege cum Episcopo Norwicensi Monasterium S. Benedicti de Hulmo, & Terras plurimas, pro Terris & Dominiis Episcopatus sui; *Len* inter alia ad Regem transiit; & jam inde nomen (ut oportuit) in *Lenn Regis* commutavit. Glauci forte & Diomedis permutatio; recte vero si ariolar, Sol ceterus alium non vidit *Lenni* Dominum quam Episcopum East-Anglorum. Illic primum ejus Municipium, illic Sedes altera, illic cuneus. Hoc in *Mintlen*, illa in contiguo *Gey-wood*. Magnam illic & primariam Ecclesiam S. Margarete dicatam sub Gulielmo Rufo struxit Herbertus de Losinga, qui Episcopatum transtulit de Thetfordia in Norwicum. Præterem dedit Rex Johannes; à Johanne Graio, Episcopo Norwicensi, Villæ Domino (cum Regem hic lautissime exceperet) exoratus. Regis ramen non Officiale fore sed Episcopi; jurandumque novum quotannis in Curia seu Prætorio Episcopi Gayvoden, ubi Aulam & egregiam Molem Præful iste suscitabat. Episcopo igitur in omnibus subaudiens, homo Episcopi nuncupatus est. Largitur Rex præterea splendida Privilegia, & à latere (ut ferunt) Gladium suum; sed quo nomen ejus magis celebrant, quam in altis omnibus munificentis, Cyphum ex argento egregium, interius deauratum, & exterius encausto (quod miraberis) insolito, costisque ex auro solido illustratum. Piaculum ducunt merum non lectissimum ex hoc haurire: & hauriunt quidem, non libant; caduntque interea Cypho plures quam ipso Gladio (Dicam cum Martiali:

Quare de
hoc (Spelmani
nota.)

*Hic Scyphus est in quo misceri jussit amicis
Largius Henricides, & bibit ipse merum)*

quem ostendunt hodie, & à latere Regis Johannis traditum perhibent, Majori præferendum: ego vero ut credam non adducor. Non enim Regis fuit, sed Episcopi Municipium; nec Majorem statuit Rex Johannes sed Præpositum, quem Henricus III. in Majorem commutavit, cum Lenni cives in Insula Eliensi partes ejus contra proscriptos Barones, fidelius multo quam feliciter [tuebantur] & in Charta Regis Johannis, qua id Privilegii concoderetur, nulla Gladii mentio. Certe Henrici VIII. donum fuit, cum villam consequutus esset ab Episcopo. Novis enim eam ornans Privilegiis, & Burgenfes mutavit in Aldermannos; & Gladium, (expressis in Charta verbis) Majori concessit præferendum. Testatur ipsius gladii in capulo inscriptio.

Dominium Villæ cum Censu, Vestigali & Theolonio ad Episcopos spectabat; sed Theolonii tertiam partem Comites Arundelii jure Castri sui de *Risinge* vendicabant. Hanc cum aliquando *Rogerus de Monte Alto*, Baro eximius, & jam Castri Dominus à Lennensibus postulasset; mœniis atque carcere interclusum tenent, donec relaxasset jus suum, juramentoque confirmasset, se nunquam super hoc aut inficias iturum, aut apud Regem conquesturum. Longæ extant rei ambages in Fiscis schedis, *Anno* *Edw. II.* Sed & in ipsum mun-

* Rex Johannes filius Henrici II. ut Achilles à Martiale Hecides dicitur, quia ab Hæco oriundus. Mart. lib. 8. Epigr. 6.

cipii sui Dominum, Norwicensem Episcopum, cervicem adeo erexerunt, ut Jura aliquot quæ super eis habuit Domini ratione, pauperibus Risingæ Burgenfibus (velut in ludibrium & conculcationem) elocavit. Incentivum proderè videtur hæc Charta; quam ab alia pariter denotanda supposuimus:

“ W. Dei gratia Episcopus Norwicensis, dilectis & fidelibus suis Johanni de Bedeford. Gilb. fil. Warin. & omnibus aliis probis hominibus suis Lenn. Excepto Eadmundo de Wasingham Majore nostro & fautoribus suis, salutem & Dei benedictionem. Sciatis quod cum nuper in die Sti. Stephani venissent ad nos apud Norwicum dictum Eadmundus Angerus de Rising & quatuor alii Burgenfes, tam ex parte nostra quam ex parte sua, villam nostram de Lenn peterent ad firmam sicut prius; Nos, habito cum pluribus viris sapientibus consilio, tandem optulimus eis ut ipsi Eadmundus Angerus & duo alii ditiores villæ reciperent villam illam ad firmam, viz. tali modo quod neminem talliarent, nec pauperes gravarent, nec alicui injuriam facerent. Quod quidem penitus refutaverunt, & Willielmum de Pinkebek ut Ballivum nostrum receperunt cum Gratiarum Actione. Et super hoc audivimus, quod (nescimus quorum ducti consilio) ipsum Willielmum ut Ballivum admittere recusantes, ingressum Domorum nostrarum & Bothæ nostræ denegaverunt eidem. Et ideo vobis mandamus quod in fide, qua nobis tenemini, eidem Willielmo & Ballivo nostro sitis intendentes, & eidem ingressum & seisinam domorum nostrarum, Gwyldhallæ, & Bothæ nostræ habere faciatis sine omni dilatione, ut fidelitatem & discretionem vestram merito debeamus commendare. Datum apud Thefford iii. Kalend. Januar. Pontificatus nostri anno iv.

Esculentis & poculentis ita à natura accommodatum, ut pœnarium Cereris atque Bacchi videatur. Ex parte enim ejus Orientali tanta incumbit vis Frumenti, ovium, cuniculorum, & campestrium Alatiliū; & ex parte Occidentali, Casei, Butyri, Bœum, cygnorum, & Palustrium Volatiliū; in viciniis, piscium hinc marinorum, illinc fluvialium & recentium; ut vix in tota Britannia, forte & Europa, in consimili circuitu tanta habeatur eduliorum diversorum copia.

Ashwick-
en-Tho-
resbei.

Lennō per Gayvodiam (de qua diximus) exeunti *Ashwicken-Thoresbei* prostat, domicilium dixerim an latibulum, nescio; sed splendido cinctum patrimonio, Domino satis dispari dominatum.

Rising.

In recto quem faciunt angulo *Isis* & *Congunus* Fluvii, è palustri solo assurgit, nomen inde deferens, *Rising*; & egesto ex immani fossa colle arduo in gyrum dato, castro insuper coronatur. Fossæ species Gothica est, ut Procopius docet, Normannisque ideo usitata, genus à Gothis deducuntibus. Licet enim Saxones Castra sua gyrata etiam Fossa circumscripserint, angustiori tamen usi sunt, & minus depressa, sed majoris plerumque circumferentiæ; quæ & hos Romani superabant. Romani autem (ut Polybius refert & Vegetius) in oblongum, si pateretur locus, castrametabantur quadrum, Fossæque 16 tantum muniabant pedum, prætenta anteriori lateri Fossæ alia quam Loricam appellabant. Formam infra videris, cum de *Brancafter* tractaverimus. Ex his quæ diximus, uniuscujusque populi, Romani, Saxonis, Dani, & Normanniprehendas munimentum.

Romanos apud *Risinge* aliquid habuisse præsidii, & loci monet opportunitas, litus procul nudum portum juxta celebrem despicientis; & effossus in vicinia nummus Constantini Magni inde pridem ad me allatus.

Castri exterior fabrica, Norwicensem exprimit; recto pariter & intestinis spoliata: Tribus in muro firmata Turribus, quas trium Maneriorum Domini, viz. de *Hunstanton*, *Wutton*, & *Ridon*, feudali obsequio tuebantur. Municipium adeo vetus, ut originem ejus nesciant archiva Regia. Prætoræ gaudet, & binis olim in hebdomade Mercatis; Nundinisque in anno quolibet 15 dierum. Ab anno duos misit ad Comitæ regni Procuratores, quos Burgenfes vocant. Vetus fuit Albeniorum Comitum Arundeliæ possessio, & in divisione

divisione amplissimi eorum Patrimonii inter Sorores Hugonis Comitis in portionem cessit Roberti de Monte Alto, Baronis limitanei.

Robertus de Monte Alto, qui Reliqua desiderantur.

Prisas hic vocat, Jus capiendi Annonam in Villis circumjacentibus ad sustentationem Castri, precium intra 40 dies reddentibus, ut Stat. An. 3. Edw. I. definitum est.

Ad orientalem *Risinga* Limitem (*Mantua me miserum nimium vicina Cremona*) *Congham* adest; nomen à Conguno quem emittit Fluviole auspicata. Hic pars maxima nostri Patrimonii, quam obtinuit olim *Gulielmus Rusteng*, qui sub Comite Arundeliae militans in Terra Sancta tempore Richardi I. Miles factus est ab eodem Comite, prout etiam — de *Ingolfsthorpe*, & *Andreas de Sharnburne*. Hoc quippe seculo Dominis licuit capitalibus Clientes suos Milites instituere, etiam Episcopis & Abbatibus. Sed Abbatibus prohibetur in Concilio [Londinensi sub Anselmo Archiepiscopo Cantuariensi, An. 1102.]

Ad *Mallingham* hinc proceditur, quam Robertus Mordant Prothonotarius Civilium Placitorum sub Henrico VIII. nuptiis tulit Barbaræ, Filiae & Heredis Johannis le Strange Jurisconsulti, eandemque transmisit ad Pronepotem.

Huc se adjungit *Rougham*, ab ævo Richardi II. Yelvertonorum Sedes, è quibus *Willielmus* sub Henrico VI. Christophorus sub Elizabetha, & *Henricus* hodie, Justiciarii claruere; hoc est, (ut Avum taceam, qui & Jurisconsultus fuit) Filius, Pater, & Tritavus. Sed *Christophorus* & *Henricus* in Northamptoniæ confederunt Comitatu.

Descripfi ante aliquot annos in Norfolciæ Tabula geographica circulum, duodecim habentem in semidiametro mille passus. Centrum posui in campis *Roughamie*, deprehendique sub illius ambitu fuisse 24 Monasteria, totidemque minorum Nobilium Domicilia. Simul in vigore omnia, cum ferale illud exiit de excindendis Monasteriis Senatus-consultum. Domicilia ab iisdem Familiis vel eatenus (puta 90 post excidium annos) possideri. Monasteria vero, ter, quater, quinquies, Dominos cum Familiis eructasse, nec reperiri hodie Monasterii Sedem, quamvis uberem & amoenam unamquamque (nam ut Abel, pingua Deo sacrificabant majores nostri) qua una eademque familia nobilis est gavisa. Duas excipio, quarum altera nondum tertiam, altera ne secundam transiit Generationem. Sed nec hæc Familiæ alicujus habitatio; nec illa à gravissimis infortuniis unquam libera. Par in reliquis observatio; ut intelligas non inanes fuisse multiplices illas maledictiones raptoribus istorum à veteribus imprecatas; Nominis vel Familiæ extirpationem, Patrimonii effusionem, Lites & Jurgia diuturna, Infortunia sæpe gravissima, sæpe etiam capitale Excidium. Numerosa præsto sunt exempla; sed hic aliud institutum.

Sed recurrendum mihi est in Occidentem ad borealem, quem faciunt Isis & Congunus, angulum. Illic *Babbingley*, ubi S. Felix East-Anglorum Apostolus, circiter An. Dom. 630. à Dunmocco applicans, incolas imbuit Christiana Fide, primamque hujus tractus Ecclesiam condidit, quæ à posteris ejus dicata patrocínio, hodie S. *Felices* appellatur. Rei memoriam etiam prædicant adjacentes montes, *Christianorum* dicti, *the Christian-bills*; & in vicinia *Flitcham*, quasi *Felix-ham*, i. e. Felices Villa seu Habitatio. Hæc Coenobio ornabatur Monialium, quod ejus Fundator Cellam statuit, ad Abbatiam S. Mariæ *Walsinghamie* pertinentem; dictaque ipsa est S. *Maria de Fontibus*, quod ab Oriente Fontes ostendit aprico interdum meatu, interdum subterraneo ludentes.

Habetur hic in Campis quadrata area & leni conclusa fossa *Mallobergium*, quod incolæ *Flitchham-burgh* nuncupant. Ibi olim, ut in Prætorio conveniri soliti sunt Centumvirales Judices (*the Free-holders* vocant) cum istius Centuriæ seu Hundredi, tum & aliarum, ad lites in Centuria emergentes dirimendas. Sic enim in Brevi quodam Gulielmi Rufi. "Willielmus Rex Anglorum

* Vid. Eadmer. l. 3. & Malmesb. Lib. 1. de Gest. Pontif.

" H. Camerario salutem. Facias convenire & considerare tres Hundredos & " dimidium apud *Flieceham-burch* propter terram illam de Holme, &c". Huc etiam convenire olim solebant Centenarii, ad Dominum Hundredi eligendum: & ex prisca moris vestigio huc annuatim hodie indicuntur Centenarii seu Hundredarii, obsequium Domino Hundredi (quem *Seclam Hundredi* vocant) praestituri.

Appleton.
Sandring-
ham.

Capella
ligna.

Progredienti versus Boream, *Appleton*, ubi splendidae aedes non ita pridem extruxit Edvardus Paston; & *Sandringham*, ubi ab ævo Edw. III. Cobbarum succrevit Familia, à læva præteritis, ad *Sbarneburne* descenditur. Hic Thokus quidam loci Dominus, à S. Felice conversus & baptizatus, secundam extruxit Ecclesiam, quam in honorem SS. Petri & Pauli Felix dedicavit. Parvam siquidem, & (pro ratione illius ævi) ligneam; unde longo tempore *Stoc-chappel* appellata est. Thoki deinceps hæres ex multis suscepta nepotibus, Edwino cuidam Dano Angliam venienti cum Canuto Rege An. Dom. 1014. desponsata est; Edwino Rex Canutus *Snetesham* dedit, & multa prædia de quibus postea, Sherburnamque uxoris patrimonium confirmavit. His ille omnibus pace atque otio fruitur, donec à Normannis ejectus est ex omnibus. Distribuyente enim inter Commilitones Angliam Gulielmo Conquestore, & partes hic amplissimas Gulielmo de Albenio, & Gulielmo de Warrenna concedente, ejecerunt illi quotquot vellent, & Edwinum pariter expulerunt. Conqueruntur pulsi & ejecti apud Regem, & (ut verbis utar MS. Codicis) "dixerunt ei quod nunquam ante Conquestum, nec in Conquestu, nec post, fuerunt contra ipsum Regem in consilio vel auxilio, sed tenuerunt se in pace; & hoc parati fuerint probare quomodo ipse Rex vellet ordinare. Per quod idem Rex fecit inquiri per totam Angliam.

Ingolf-
thorp.

Possedit præterea Thokus quicquid jacet ab Occidente *Sbarneburnia*, versus Mare; deditque totum Ingulpho cuidam cum Filia unica in matrimonium, qui de nomine suo Villam ibi condidit *Ingolsthorpe*, ut refert MS. Liber cui fidem cedo, licet ego dictam putarem ab *Ingol* Fluvio, qui hic Mare ingreditur.

Ad fontem *Ingolis* habetur *Nevesham*, i. e. Villa Vaccaria, hodie *Snetesham*, quam (ut diximus) Canutus dedit Edwino Dano; sed eripuit illi Gulielmus de Albeney Normannus; suæque Prosapiae Comitibus Arundeliae permansit, donec ex Nuptiis unius Hæredum ad Monte-altos transiit, & ab his per stirpem Regiam ad Duces Lancastriae. Nobile Dominium & splendidis ornatum Privilegiis; sed inter ignobiles jampridem distractum.

Dedit etiam Canutus Edwino Dano planitiem ex parte orientali *Sneteshamiae*, ad fenos incultam mille passus. Illic Edwinus in lapideo Colle, quem seculi illius Latinastri *Hogum pecosum* appellabant, *Stanehow* condidit.

Sedgeford

A vado hic prope arundineo nomen ascivit *Sedgeford*, Ecclesiae S. Trinitatis Norwici olim collata: sed possessio nuper Johannis le Strange, cujus ego Filiam primogenitam in matrimonium duxi; Patrimonium vero (qua per fas aut nefas) sub Puellarum abrafit Socr Infantia; suam inde pinguescens sobolem. Injuriae longae sunt ambages. Transeo.

Sedgefordia exeunti exurgit Promontorium S. *Edmundi* Regis & Martyris nobilissimi, qui ab Offa Rege East-Anglorum in Regni adoptatus successorem, splendido navium & ministrorum apparatu, à Germania, huc in portum vicinum appulit, cui nomen eo tempore fuit *Maiden-boure*, i. e. Thalamus Virginis. Quis autem hic esset locus magna me tenuit dubitatio. Portum de *Hecham* exilem & obscurum cenfeo; nec *Burnham* satis laudabilem ad splendidum excipiendum Navigium, quamvis Naves illius seculi satis agnosco tenues. *Lennum* igitur in considerationem veniens, præ cæteris arridet; tum quod Portus sit tractus istius eminentior, tum quod S. Margaretae Virginis Sacrarium esset & Thalamus. Hanc enim Lennenses ex antiquo Divam co-

* Will. Cong. non omnes sed plerosque Anglos exheredavit. Lib. Raml. Soff. 155. (Nota Spelmani)

luere tutelarem; Templi ejus Custodes sunt, & in honorem ejus tria Capita Draconis, quem illa Cruce armata triumphasse dicitur, singulo in Ore singulis fauciata Crucibus, pro Insignibus gestant. Habeturque Emblema Virginis in Sigillo suo publico, Draconem Cruce vulnerantis & conculcantis, cum hac Circumscriptione:

Stat Margareta, Draco fugit, in Cruce læta.

Sanctus vero Edmundus à Maidenbore non longe progressus, Villam condidit regalem *Hunstanstane*, quod Johannes Pringtonus *Dulcedinem & Potentiam* interpretatur; moratusque illic per annum pene, *Psalterium Davidis* in Saxonico idiomate memoriter fategit recitare. Liber ipse à Clientibus suis Monachis Buriensibus in ipsius honorem religiose custodiebatur, usque ad excidium Monasteriorum. Ab *Hunstantonia* perrexit Athelburgum, regnique anno 16. Martyrio coronatus, Divorum ascribitur Collegio; & in vertice Promontorii Hunstantoniensis Capella splendida honorabatur.

Pervenit deinceps hæc Villa Regia ad Alfricum, sub Canuto Rege Elmamentem Episcopum; qui eandem cum *Holme* adjacente Vicula (cujus Ecclesiam struxit Hen. Nottingham) Monasterio S. Edmundi Buriensis dono dedit. Sed deducta postea sub ingressu Normannorum, ad Albeneios Jure feudali *Extraneis* vulgo *le Strange* ceditur, ob præsidium à 2 Militibus faciendum in Castro de *Risinge*. Longe itaque mansit apud Barones *le Strange* de Knoken; sed à Johanne Barone An. 9. Edv. I. confertur in Hamonem Fratrem suum de se & Hæredibus suis tenendum per ser. — E cujus Prosapia illic hodie floret *Hamo le Strange* Eq. priscam Familiam avitis ornans Virtutibus, & (quod magis in pretio) facultatum accessione.

Cerere (ut Hyblen Melle, croco Tmolium invidere taceam) luxuriat pars hæc maritima, præsertim Hordeo, ex quo Vinum conficiunt Britannicum, Vitis æmulum; Saxonibus antiquis *Bier* (quod proprie *Hordeum* significat) appellatum; *Bevyn* Græcis, qui hoc adeo capiebantur Latice, ut in Honorem ejus Byrtorum seu Hordaceorum Festum instituere, à Constantinopolitanis usque ad Anastasium Imp. qui hoc sustulit, celebratum. Festum (inquam) sustulit Imperator Anastasius; Laticis desiderium omnes non tollent Imperatores. At num Saxonibus *Beire* in usu? Bryton (inquam) seu Potus hordaceus, quem alio nomine *Eale*, & à dulcedine *Sotb-eale* appellabant: non noster iste lupulatus; nam cum Hordeo Lupulus ante medium Regni Henrici VIII. nuptias non inierat. Ex illa vero die summo in honore lupulatum *Bryton*, quod (ut Græci) Numen colimus, Salutisque prædicamus donatorem. O funestam & infelicem salutem! Prima enim quæ hic unquam pota fuit, in excidium transiit totius Gentis. Cum Hengistum Saxonem ad auxilium induxisset Rex Britannus Vortiger, & Hospes Hospitem mutuis se exciperet Convivationibus, Roena Hengisti Filia pernoctanti apud Patrem Regi propinans ait, *Was-hale*. Rex loquelam non intelligens, quid dixisset, quærit à circumstantibus; Responsum est, potare eam salutem Regi; qui rei captus novitate, blanditias colit cum Virgine, & brevi in Uxorem ducit. Illa Patris erudita technis, Proceres Regni ad Convivium vocat, ubi ex insidiis trucidantur omnes, & ad Saxones translatum Regnum.

Hic *Branodunum* (à *Brano* non procul Fluvio, & *Duno* pro Monte) vulgo *Brancafter*, i. e. Castrum ad Branum: Pelagus à sinistris late spectat; à dextris longius ericeta.

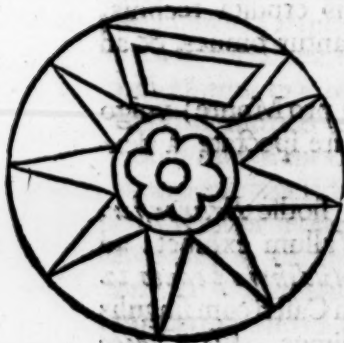
Recipiente se in orientem littore, *Branodunum* vetus, hodie *Brancafter*, ericeta longius, Pontem juxta despiciens, Romani Castri Vallum exhibet, ad mensuram à Cæsare datam (Bell. Gall. lib. 2.) *Castra in altitudinem pedum 12 vallo, Fossaque duodeviginti pedum munire jubet*. Formam Castri cum singulis suis dimensionibus, ut Romanam plane agnoscas, apposuimus. [In Codice MS. *Spehmanni spatium vacuum relinquitur; ipsa Castri figura desideratur.*]

* Stow, p. 76. b Vide Veget. l. 3. c. 3. & Stewer. f. 259.

Castri dimensiones ipsum ostendunt non tumultuarium fuisse, aut in transitu factum, sed legitimum & stativum, ad custodiam insuper totius Littoris Borealis contra Saxonum Irruptiones (quibus adeo expositum fuit, ut *Littus Saxonicum* appellaretur) destinatum. Ei nomen à *Bran* seu *Brun* & *Burn* Fluvio, & *Duno* pro Monte; quod etiam, ut *Benig* & *Bupig* Saxonibus, *Oppidum* alias significat. *Bran* vero & *Brun* confundi videas in Leofrici Anglo-Saxonis cognomine, qui alias Dominus de *Brane*, alias de *Burne* appellatus est; Pater scilicet Herewardi. Stationem hic habuit sub Comite Littoris Saxonici Præpositus Equitum Dalmatarum cum sua Vexillatione.

Sed illud quaero, quorum tempore coeperit hoc *Littus Saxonicum* appellari, ejusque Præfectus, *Comes Littoris Saxonici*? Ferunt inde Nomen, quod hic Comes Littus tueretur contra Saxones. Qui autem hoc? Num Britanniam infestarunt Saxones, Romanis dominantibus, certe non reperi. Pro derelicto autem habuerunt An.Dom. 446. cum ab Ætio Consule opem contra Scotos & Pictos, Valentiniano III. imperante, implorantes non exorarent. Saxones vero ante annum 449. non appellunt, nec tum quidem a Vortigerno haud accersiti & Britannis. Ante hoc igitur tempus non videtur *Saxonicum Littus* appellari. Quid ergo in Imperiorum Notitia tanto proponuntur fastu Romani Magistratus in Britannia, *Vicarius Britanniarum*, *Dux Britannia*, *Comes Britannia*, *Comes Littoris Saxonici*, &c. cum insigni Præfectorum, Officialium, & Ministrorum caterva & apparatu? Suspicio, ut in Provinciale Ecclesiarum in Romanâ Cancellaria, *Patriarchæ*, *Archiepiscopi*, *Episcopi*, *Suffraganei*, hodie numerantur sub Infidelibus, ut floruerunt olim sub Christianis. Hoc autem posito, male convenit ut Romani nomine uterentur sua ditione non enato: Provinciale siquidem prisca retinuit appellationes. Celebre igitur monumentum *Notitiam Imperii*, de cujus origine & antiquitate crebro contenditur, liquido constat sub exitu Valentiniani III. concinnatum fuisse, non exutis omnino Romanorum reliquiis; sed turgescere indies alluvione Saxonum, Littus jam ideo nuncupari Saxonicum, & Præfectum ejus, *Comitem Littoris Saxonici*, qui sub Valentiniano I. superioribus paucis annis (Marcellino teste) *Comes maritimi tractus* appellatus est. Hæc ad ambiguum enucleandum; ad me redeo.

Pinguntur huic Comiti in *Notitia* pro insignibus oppida novem, quibus præsidebat in Insula (puta Britannia) cum nominibus ascriptis: scil. unum in Suffexia; 5 in Cantio; 1 in Essexia; & 2 in Norfolkia, *Branodunum*, viz. & (de quo postea) *Garienum*. Merebant sub eo una Legio, quæ hoc tempore 1000 fere continebat Pedites: seni Numeri forte 1200 Pedites; & 2 Ordines Equitum, i. e. Dalmatarum, qui præsidium hic agebant; & *Stableianorum*, qui ad ostium Garieni, numero simul 200, vel hunc circiter. Sic tota ejus Militia per novem Oppida seu Stationes disposita, continebat plus minus 2200 Pedites & 200 Equites. Dalmatae vero hi dicti sunt, quod è parte Sclavonia, quam Dalmatiam tunc appellabant, conferberentur. Eorum Insignia præbet ut vides, *Notitia*: colores vero ex antiquis sic expressit Pancirollus. *Præferunt* (inquit) *in alba Parma duplicem argenteum Globum; quorum primum minorem sex virides Munitiones circumstant; alter septem acutas cuspides emittit. Supra est quadrata Tabella, quæ unam Legem duplici Orbi Romano dari insinuat; prominentes Mucrones eadem hostibus nunciant.*



Eruntur hic sæpe Romana Numismata; ad me etiam nonnulla delata, cum duobus aliquando Vasculis æneis seu Capedunculis. Regiam autem Villam ipsam (sic enim olim appellatam reperi, & regalibus imbutam hodie Privilegiis) Cœnobio S. Benedicti Ramensi dedit Vulfgyva

Comitissa, Uxor Ailwini East-Anglorum Ducis, & totius Angliæ Aldermanus

* *Oscid. Vexillas. Comita. cap. 27.*

(id est, Justitarius) qui opulentissimum *Rosefie* Monasterium fundavit sub An. Dom. 973.

Brani ostio septemplex innititur *Burnham*; nomen inde (si Britannorum *Burnham*, cum Saxonum *Brun*, *Prun*, & *Burn* confunderim) etiam deferens. Hoc autem isti pro *Torrente* dixerunt: sed Gunterus (Austriades) ubi de *Hayl-prun* Oppido Imperiali loquitur, *Hayl* Salutem exponit; *Prun* vero Fontem: eoque sensu, *Fontem* (inquit) *liquere Salutis*. Portu claret & Mercato; aliquando etiam Prioratu.

Obtinuerunt hic olim à *Warreniorum* dono splendidum *Calthorpii* beneficium, Dominorumque nra symbolum auro & cyaneo tessellatum, quod trajectu distinctum armelino hodie gestant in Clypeo; ut pro more veteris illius seculi Patronum enuncient feudalem. Sic ut diximus *Sharnburni* Albenciorum; & moris typum exhibuisse videtur apud Giraldum Cambrensem, sub Henrico I. Giraldus de Windesora, Constabularius Penbrochiensis, qui 15 Armigeris arma Dominorum suorum cum Feodis dedit, ipsosque statim militari cingulo decoravit. Habetur sub Edv. III. in quatuor illis Armigeris pugnacissimi Baronis de *Audeley* recentius testimonium; sed nos aliud agimus. Transiit hæc Hæreditas superiori seculo cum Filia Philippi *Calthorp* Equitis ad *Parkeros*, à gente Baronum de *Morley* propagatos.

Egeruntur hic secundum litus crebri Monticuli; Saxonum & Danorum proculdubio Sepulturæ (nam de Germanis Tacitus^b, *Sepulchrum* (inquit) *cesspes erigit*) an & Romanorum, fossione dignoscendum. Hi mortui, Cineres in Urna condidere, aggestis desuper Cespitiibus; ut in Exequiis Mezentii prodit Virgilius. Illi non Cineres, sed Cadaver integrum Colle opprimebant. Tria vero exhibentur observanda. Primum, tractum hunc, qui jam Cereris videatur Thalamus, incultum tunc fuisse; nam in Arvis sepelire mortuos, Gentium prohibuit Superstitio; ut apud Ciceronem legas in fine Libri 3. de Legibus. Secundum, Paganorum & Gentilium hæc fuisse Monumenta; Christiani enim more Judæorum, in Fossa occultabant mortuos, licet à Saxonico *Beuz*, quod *Montem* notant, nos hodie *to bury* dicimus, quasi monte tegere, ut Latini etiam *tumulare*. Tertium, Scenam hic fuisse Martis, Clientumque ejus Coemeterium, qui *Branoduni* & pro Portu Patriæ ad Castra juxta *Creake* & *Holkham* contra Danos militantes occubere. In Campis enim de *Creake*, haud procul à Cœnobio, amplum erigitur sepimentum militare, Saxonici operis; à quo decurrens Via regia, *Blood-gate*, id est, sanguinea Via, nuncupatur; cruenti illic proclii testimonium. Habetur & his partibus *Ebuli* herbæ copia, quam velut è Danorum exortam Sanguine, Incolæ *Dane-blood* vocant.

Habentur & per loca in depresso Litore Arenarum tractus, marinos cohibentes Fluctus, *the Meales* à Farinæ Pulverisque similitudine (nam vox utrumque sonat à Sævico & Germanico *Mul* pro *Pulvere*) appellati.

Quarto à Mari Lapide, depressius in Valle sedet *Walsingham*, illustri olim Cœnobio in honorem beatæ Mariæ Virginis celebrata. Penetræ illic parentum Religione augustissimum, ad effigiem Capellæ Nazareth in Terra Sancta, ubi Gabriel Angelus Deiparam Virginem salutavit: Conditum à *Richolde* Vidua nobili, Villæ Domina, supra 400 annis ante excidium Monasteriorum, cum in Visione tertia ad hoc excitata esset ab ipsa Diva, Exemplum (ut ferunt) Edificii demonstrante, & Miraculo postea Fabricam erigente. Multos illic divinæ Potestatis radios effulsisse perhibent, sanatas omnes morborum species, nec obricent mortuos suscitatos. Hinc ab omni nostri Orbis angulo celebris ad Divam Virginem *Walsinghamiensem* (*Parathalassam* vocat Erasmus) Peregrinatio: Nec à vesana tantum Plebecula, sed ab ipsis Regni atque Sacerdotii Potestatibus. Obtinuit fama celebris, me adhuc puero, Regem Angliæ Henricum VIII. nudis pedibus à *Basham* ad præsentiam Virginis perrexisse; conceptisque Votis, Monile peringentis precii obtulisse: Forte ut leniret

Creake.
Holkham.

Ebulum.

The Meales
Miles, seu
Mules.
Walsingham.

Divam, quam, exciso cum Coenobio Penetrali, extorrem brevi relegaturus erat. In ea quippe miram deprehendit bonitatis indolem, exigui memorem beneficii, & ingentium (ut Numen decet) obliviosam injuriarum. Mors igitur huic legavit Testamento Animam, si legatam recte collocaverint Executores; qui in alio, quod sciam, nihilo impleverunt ejus Testamentum. Beatissimæ Virginis Imaginem Chelseiæ delatam Flammis dedit Monasteriorum Excisor Cromwellus, Anno 30. ejusdem Henrici. *Holl. p. 971.*

Barsham. Relicta Walsinghamia, & Villis in confinio croceos anhelantibus Odores, *Barsham* sub illo tempore Ædes condidit istius tractus illustrissimus Gulielmus Fermer, Eques potens; & cujus jam Familia ad *Calthorpos* Nuptiis transfiguratur sunt.

Fakenham. Adjacet *Fakenham*, Mercatorium, quod in sexto à Mari Lapide Salinam olim præbuisse (ut testatur Liber Angliæ *Censualis*) mirum opinaberis.

Illic ad Occidentem *Rayneham*, cujus sub Edv. IV. & Hen. VII. Dominus fuit *Rogerus Townesend*, Eques primo Regiarum Causarum (quem *Attornatum* vocant) Procurator, postmodum Civilium Placitorum Justitiarius. Ejus Abnepos homonymus, Animæ & Fortunæ dives Facultatibus, avitas Sedes non tam novis Ædibus, quam nova ædificandi Fabrica magnifice illustravit.

Wissington. Nec procul *Wissington*; quod Herbertus Bozun Normannus sub Gulielmo I. emeriti nomine suscipiens, longa Nepotum serie, in hodiernum transfudit Sobolem.

Mileham. Et in proximis *Mileham*, si non alio, Cunis memorabile *Edwardi Coke*, summi nuper Angliæ Justitiiarii, Legum Officinæ Conditoris, & quod ruptis illibus fateantur æmuli, Jurisprudentiæ nostræ Coryphæus. Prædicabat miri quidpiam ejus Genitura; Matrem ita subito juxta Focum intercipientem, ut in Thalamum cui suberat non moveretur. Locum ipsum ipse mihimet demonstravit.

Elmham. Late hic ad Hieri ramum borealem distendit alas nobile Dominium *Elmham*, quod usque Patrum nostrorum memoriam secularem nunquam agnovit Possessorem. Gentilium enim ævo Flaminis perhibetur Habitatio, conversusque ad Fidem à Felice Sigeberto Rege & Anglis Orientalibus, in Episcopi transiit Patrimonium, cujus Sedes Dunwici fuit. Cum vero tres illic successissent à Felice Præsules; graveque videretur tantam plebem unius credi moderamini; divisa est Parochia inter duos; relictaque alteri Suffolcia cum Dunwico Civitate, alter sortitus est Norfolciam cum Elmhamia. Sederunt hic deinceps ante An. Dom. 1088. viginti tres Episcopi, à Sede *Elmhamenses* nuncupati.

Castellum præbuit in egesto Colle, cui se recepisse dicitur Episcopus Norwicensis, cum Excommunicationem, quam Innocentius IX. in Joannem Regem promulgaverat, edixisset, Regemque merito accendisset. A Castello per Cuniculum subterraneum in Ecclesiam itur ad Altare; ubi sancti olim Episcopi Jejuniis & assiduis Orationibus incumbentes, Deum clam mortalibus invocabant. Ecclesiam condidit sub Gulielmo Juniore Herbertus de Losinga, primus Norwicensis Episcopus; vel collapsam potius à fundamentis credideris excitasse: Sedem enim Episcopalem tot annis Ecclesiâ caruisse nemo cogitet. Traditur hoc Dominium cum reliquo Episcopatus Patrimonio in permutationem, ut præfati sumus, Henrico Regi VIII. à *Richardo Nix*, Episcopo cæco, ut è laqueo quem inciderat semet liberaret. Rex acceptum D. Cromwello contulit funestum donum. Securi enim hic adimitur, & effuso postea integro Patrimonio, Pronepos ejus D. Coko ipsum venundavit, ærumnarum fatis exin conficio.

Gressenham. Ad australem Hieri ramum *Gressenham* assidet, nobilis olim *Esotevillorum* Habitatio, & Clientes multos in obsequium habens militare, per *Foliotos* ad Tho. Hastings, Baronis de Abergavenni fratrem, transiit. Ejus ortus à Nepotibus *Edwardus Hastings* (cum in Hastiludio occisus esset An. Dom. *Laurentius Hastings* Comes Pembrochiæ) titulum Baronis de Hastings, & sine discer-

discerniculo insignia, coccineam scil. Manicam in Clypeo aureo, sibi met assumpsit. Graviissimas ideo lites cum Grey de Ruthino, Barone legitimo è foemina Hærede, tum in Ouriis Civilibus tum in Militari, per annos plurimos incredibili tuebatur pervicacia: nec victus denum & incarceratus succubuit, nec moriturus. Desiit vero ejus familia in Hugone Hastings; hæreditate ad Extraneos & Brownos per Filias transeunte.

Nec silentio prætereundæ Cley & Blackney, Portus non inhospitales adversis Euripi incumbentes faucibus: eo autem prior clarior, quod Nautæ ejus An. Dom. 1406. Filium & Hæredem Regis Scotorum, foederis causa ad Gallia Regem navigantem, interceperunt, & Henrico IV. Regi Angliæ manus optatissimum exhibuerunt.

Jam in Boream reclinantibus, ad initium Buri Fluminis habetur Melton, Constabulariorum aliquando Sedes, & ex nuptiis ad Astleios venire edidit, qui in illustri sub Henrico VI. duello Gallum in Gallia coram Gallis vicit, laborantemque famam suam emancipavit.

Burus tenui hinc procurrens filo, à dextra Heydon linquit, aliquando Mercatorium.

Et Sall, ubi elegans Ecclesia, è Brusio (qua ex insculptis insignibus conjectare licet) Villæ Domino & Patrono, circa ætatem Henrici VI. condita. Cancellæ vero æque elegans à quodam Gulielmo Wode, Rectore Ecclesiæ & Decretorum Baccalaureo à fundamentis struitur An. Dom. 1440. A Brusis vero ad Townsends, &c.—

Tria hic vicina Mercatoria; Repham, tribus splendidis in uno Coemeterio Ecclesiis splendidum; sed una jam diruta: Caston, ubi manus ænea (rationem non teneo) præfertur Domini Senescallo: & qua Burus Ponte jungitur, Ailesham, quod Ducatus Lancastriæ apud nos Prætorium est. Mirum hic in jure nostro; Manerium à Manerio, & per virgam teneri ad voluntatem Domini, & per copiam Rotulorum Curia concedi; Manerium scilicet de Sextons de Manerio de Ailesham. Loquor in Forensi Dialecto: sed qui nescierit ipsa Feoda militaria tenta olim fuisse & per virgam & ad voluntatem Domini, legat si placeat quæ de Feodis in nostro Archaeologo differuimus.

A læva Blickling, Bolannorum aliquando Sedes, è quibus orti sunt Thomas Bolen, Comes Wilttheriæ, & Anna Bolen Uxor Regis Henrici VIII. optimæ Principis Divæ Elizabethæ Mater, natalitium hic sortita. Cadente in fatum Jacobo Bolen Avunculo Regina Elizabethæ, Blicklinga ex nuptiis ejus Filia & Hæredis, ad Johannem Clere pervenit: cujus è Filio Nepos Edwardus, Ordinis S. Michaelis Eques, eam vendidit Henrico Hobart Equiti, summo Plebei Tribunalis Justiciario; qui ædes veteres insigni auctas impendio, Familia suæ stationem posuit nobilissimam.

Ab Austro, non præteream Wichingham, clarum olim Wichinghamiorum Familia; è qua sub Edw. III. floruit clarissimus Nominis illius Jurisconsultus; & Bretonum, non minus insigne celeberrimo illo Episcopo Herefordensi, qui sub Edw. I. Pandectum Juris nostri Regii concinnavit; quàm facinore Joannis Breton sub Henrico III. vulgatissimo: Godofredus de Millers, Eques Genere & Militia clarus, concubitus ambit Filia Joannis Breton. Illa, patre consulto, noctem pangit, qua cubiculum Virginis Eques clanculum subrepat: Captus vero ex insidiis gravissime primum vulneratur, deinde flagris cæsus, acerbissime per distentos ad trabem pedes tollitur, mortemque ardentius imprecans, abscisis membris virilibus, mutilatus est. Accidit & eodem tempore dapfili cuidam Clerico simile infortunium; sed commotus hisce Rex præconia per Provincias edixit voce, ne quis præsumat, nisi pro Coniuge, adulterum membris mutilare genitalibus.

Trans Burum in conspectu Blicklingæ, pare velut distantia, habentur Calthorp, dictum à frigore, & Erpingham; Viculæ tenues & jam obscuræ, sed felix utraque è celebri & antiquæ Familia Natalitiis. Illa Calthorpiorum,

^a Walsing. Ypod. p. 566. ^b Mat. Par. An. 1248.

propaginem late distendentium; hæc Epingamiorum fortiter dimicantium: è quibus unus fuit è xv viris qui Henricum Ducem Lancastrie ab Exilio ad Regni molimina redeuntem, comitatus est: & qui Henrico V. in Ageneortensi proelio fortissime dimicaturus, rudem ejecit ineunda pugna cesseram auspiciatissimam.

Baningham.

Hic à latere *Baningham*, ubi Rex Henricus I. *5. Marcatus Terra dedit Gerardo Tassard tenend. de eo per Serjantiam Balastrie* (ut inquit Scheda) i. e. Arcubalistæ.

Berningham.

Reflector paululum in occasum ad *Berningham*, à Berninghamis per Hetherfetos ad Pagraves ducta: è quibus Johannes Pagrave Juriconsultus ædificium recoluit & filio dimisit.

Baconsthorp.

Et *Baconsthorp*, ubi à Johanne Heidon Juriconsulto sub Henrico VI. potenter excrescens Heidonorum Familia, jam in deliquium regressa est.

Gresham.

Adjacet *Gresham*, nomen faciens ditissimæ exinde Profapiæ; quod *Thomas Gresham*, Prætor Londinensis, & Regalis (ut vocant) Excambii Conditor, florere incepit.

Felbrig.

Hinc in boream Mari vicinior habetur *Felbrig*; Nomen & Sedem præstans vetustæ & effectæ Familiæ Felbriggorum; è qua D. Simon de Felbrig, Eques inter nostros celeberrimus Connubio potitur Margarettæ, Filiæ Ducis Thasæ, Regis Bohemiæ Nepotis, è qua Alanam Filiam & Hæredem suscitavit, nuptam Gulielmo Tyndall, Patri Thomæ Tyndall, qui genuit Gulielmum Tyndall, ad creationem Arthuri Principis Walliæ Balteo cinctum militari, & jure Margarettæ Proaviæ suæ, Hæredem Regni Bohemiæ denuntiavit. Sic Heraldorum nostrorum Fasti; sic me puero fama celebris.

Cromer. Gimingham.

Jam ad litus reversus, *Cromer* Mercatorium Neptuno contritum inimico prætereo; *Giminghamiam* accedens, Ducatus apud nos Lancastrie Sedem primariam. Ingens illic Aula columnis distincta, quarum ea olim ratio fuit, ut supra columnam suæ conditioni designatam nemo ascenderet: Retinetur & prisca moris consuetudo: à Colonis Manerii quos *Socmannos* olim, hodie *Tenentes in Soccagio* vocamus, non tam censum pecuniarium quam opera rustica, & ad victum vestitumque pertinentia repetere. Moris ut Romanis insoliti, Tacitus meminit Cisalpinis omnibus in usu. Nobis vero mutavit primus Rex Henricus II.

Bronholm.

Nec procul in crepidine Promontorii *Bronholmensis*, Coenobiolum aliquando *S. Sepulcri*, à G. Glanvilla censu pauperi constitutum; sed ex cruce quæ illic colebatur, auctius indies & perquam celebre. Liceat dicere de hac, quid proditum: Factam sine dubio (ut asseritur) de ipsa cruce in qua pependit Dominus noster, ad longitudinem pene humanæ manus, cum duplici ligno per transversum; ferri solitam inter alias Reliquias à Patriarcha & Episcopis ante Baldwinum Imperatorem Constantinopolitanum (Flandriæ prius Comitem) in aciem progressurum contra crucis inimicos; neglectaque fortuito semel aliquando, cæsum cum exercitu Imperatorem. Erat tunc Constantinopoli Capellanus quidam Anglicus Divina inter alios celebrans in Capella Imperatoria, & reliquiarum agens custodiam; qui cum omnia desperata videret & perturbata, reliquias & pretiosa multa clam furripiens, Angliam venit; & quædam Monacho S. Albani vendidit, quæ Parisius fatetur, magna illic fuisse veneratione cum hæc ipse scriberet, id est, An. Dom. 1223. Crucem vero nullis cederet Capellanus; qui & ipsum & duos Filios suos parvulos in ordinem non susciperent Monachatus. Repudiata conditione à divitibus multis Monasteriis, ut fraudem suspicantibus; ad *Bronholmiam* devenit Prioratum, ædificiis & inopia jam tum laborantem. Pacta vero illic conditione Prior & Fratres suscipiunt Crucem, & in honestissimo Oratorii sui loco magna cum reverentia & lætitia collocant. Subsequitur mox miraculorum ingens fama, & non solum ex rota Angliæ sed è longinquis regionibus huc

concurritur. Coenobitis interea luculentus quæstus. Hujus meminit sub exitu quarti abhinc seculi * *Galfridus Chaucer* in *Præpositi lasciva Fabula*.

*And with the falle out of her slepe she braide,
Help holy Crosse of Bromholm she said.*

Hic in Littore una sedent *Paston & Pastoni*, Villa tenuis, Gens ditissima. *Paston.*
Legendo à *Pastona* Littus occurrit *Waxham*, Sedes Woodhousiorum Familiae, *Waxham.*
ortu & insignibus ab illa *Kimberlea* discrepantis; sed claræ pariter. Hic *Gu-*
lielmus Woodhouse Eques, *Jacobo Regi* nuper in facetiis, & Familiae corruen-
tis Sulcitor, primum apud nos instituit Decipulum Anatarium, peregrino no-
mine à *Kope*, i. e. *Cors* seu *Cavea* nuncupatum. Stagnum siquidem valde
latum est, sed parte una Arundinibus septa, in angustiam porrectum. In hac
angustia nutriuntur indies Anates aliquot proditoris causa mansuefactæ, quæ
totam regionem circumvolantes, sui generis Volatilia redeunt ducunt cater-
vatim in Stagni latitudinem. Apparente jam tum caute in extremitate latitu-
dinis Stagni Cane subdolo ad hoc edocto, secedunt Volatilia remotius angu-
stiam versus, prementeque adhuc Cane, sed à longè, & in aquam alias semet
immergendo alias furtim efferendo, capessunt tandem ipsam angustiam. Pa-
lam nunc exultat Canis; eoque viso, sidunt Aves proditoria; & dum in Alas
se conjiciunt Advenæ, Retibus obruuntur Anatarii.

Prædantur anno uno in hujusmodi Decipulo, tot quot vaneant Aves mille
Coronatis Gallicis, & (ut audivimus) multo supra; in vicinorum grave ad-
modum præjudicium, qui hoc modo & Aucupii coercentur voluptate, & Men-
sæ pristino supplemento. Germanis igitur superioribus capitale perhibetur
hoc erigere.

Ad meridiem *Walsham, & Worsted*.

Buri in margine *Cowshil* est, cui inter Privilegia indulgit *Henricus III.* ut *Cowshil.*
Servus qui hic per annum manserit, exiret liber.

In adversa ripa *Frekenham-hill*, ubi *Turnus* Vice-Comitis totum annuatim in-
ducitur Comitatu.

Vicinum *Croftwick* obtinet. *Crafforum* Sedes, vulgo *le Grosse*, equestris *Croft-*
sub *Henrico III.* Familiae. *wick.*

Nec longe *Sproweston*, Ædificiis à *Joanne Corbet* Jurisconsulto (*Norwicen-*
sibus oriundo) adornatum, Prædiisque auctum à *Milone Equite* aurato, Filio *Spro-*
ejus: jam cum *Milonis* Pronepote in tutela Regis est. *ston.*

Redeo ad *Burum*, qui depressas sæpe planicies superfluens, nobiles multas
edidit piscaturas, & Percarum genus celeberrimum. Memorabile est quod ab
Accolis accepti: *Ranwortha* aliquando centum viginti modios Piscium duo-
bus circumclusorum retibus deprædari. *Rand-*
worth.

E regione sedet *Ludham*, ubi Ædes non Episcopales, sed Episcopi *Norwi-*
censis in rure unice. Officinam fuisse dicuntur agriculturæ Abbatis *S. Bene-*
dicti de Hulmo, vulgo *Grangiam*. *Ludham.*

Subest in palude tremula rudera ejusdem Abbatiæ moles ingens, quæ ex
insculptis insignibus sculpturam prodit recentiore. Fundavit tamen eam
Rex *Canutus* in honorem *S. Benedicti*, cujus ut apud Anglos Ordo vetustissimus, *S. Bennet.*
ita & Regula gratissima & frequentissima. Tanta eam admiratione amplexus
est fortissimus Monachus propugnator Rex *Eadgarus*, ut cum Monasterio
S. Ethelredæ Eliensis, quod instaurabat *Wintoniæ* Episcopus *Ethelwoldus*,
40 hydas terræ apud *Hatfeld* elargitus esset; nobile Manerium de *Sudburne*
addidit in Coronidem, sub conditione quod *Ethelwoldus* Regulam *S. Benedicti*
de Latino in Anglicum transmutaret.

Festinas jam *Burus* ad *Hieri* confluvium, *Acleam* à dextris præterlabitur, *Acle.*
quam *Eadnothus* Filius *Goderici* Abbatiæ *S. Benedicti* *Rameiensis* dedit.

* *Reve's Tale*, Fol. 33. Col. 2. v. 1177. b *Lib. Eliens. pag. 4.*

Flegg.

A finistris *Flegg* Peninsula frumento dives & ubertate soli, primam excepisse videtur Danorum Coloniam; tum quod Portui, cui appulerunt, sit vicinior, naturæque munita beneficio; tum quod exiguo suo ambitu 13 Villas comprehendit in *by* desinentes, voce Danica & Villam seu Habitationem significante. Hinc nos hodie a *By-law* dicimus, quod Villa quæpiam sibi constituerit; scriptoribus Danicis *Bi-laginem*, à *By* pro Villa, & *Lage*, quo nos (ut solemus) *g* in *te* mutamus pro *Leg*.

Tarmouth nec verum *Garianonum*, nec à vero alienum est. Sedes enim utrique ad ostium Fluvii Garienis, qui & utrique nomen indidit: Huic verò à canali vetere, illi à recentiore. Ambo autem in illo Littoris spatio, quo An. Dom. 495. Cerdicus Saxo cum Cinrico filio ejus & quinque Navibus Portum ingrediens, Britannos prosligavit obvios, Portuique nomen, Cerdici oram, ut Æthelwerdus refert, dereliquit. Sub quarto inde lustro, Stuff & Wuthger pariter favientes, hanc diripiunt Regionis partem.

Ambo autem in illo Littoris spatio, quo sub Comite Littoris Saxonici præsidium agebant Stableiani Equites, qui proprie suberant Magistro Equitum, in Occidente Duces limitanei (*Panc. p. 86. b.*) Sed ut alii Magistrorum Milites aliis Ducibus & Comitibus limitaneis merebantur: sic hi sub nostro. Erant vero sub hujus nomine Vexillationes aliarum plures, ut *Stableiani* primi, secundi, tertii, *Africani*, *Italicani*, &c. sed an ab aliquo eorum nostri deferendi sint, an per se *Britannici* appellandi, aliis linquo. Dicti omnes à loco unde orti sunt: & forte legendum putat Pancirollus (*p. 87. a.*) *Stabaliani*, qui fuere Gallicæ populi. Stableianorum symbolum nescio an omnium, vel eorum tantum, qui in Occidente sub Magistro Equitum militabantur, sic in Notitia Imp. describitur, & à Pancirollo qui in MSS. depictum vidit, enarratur, fol. 135.



E veteris *Garianoni* exequiis succrevit novum, & ut Maritum Uxor Fluvium sequitur exulantem; longo tamen ut videtur intervallo. In appulsu enim Saxonum nulla hujus vel alterius mentio, sed in ipsa ora velut nuda & anonyma Cerdicus conscendisse fertur, nomenque inde, ut Æthelwerdus meminit, *Cerdericshore* imposuisse.

Ut Venetiæ in arenis Maris Adriatici sedem sibi è ruinis Aquilegiæ eluctatæ sunt; sic nova hæc *Fermutha* nostra è deliquio vetustioris originem sumpsit & incrementum. Sita est enim in lacinia tetra, quæ olim Arenarum moles fuit; ab Oriente, falso Mari; ab Occidente, Fluvio falso (vel ut *Mihmus*) latitudine interclusa; longitudine 2000 passus non excedens: Quod miraberis tamen, aquis ubique dulcibus exuperans. Mare exhibet Xerxiæ Classi satis fidam stationem, Fluvius Portum tutum præbet, qui 600 Naves Equore suscipiat languescenti. Ora igitur Cerdici olim, & Saxonibus excipiendis commodissime exposita. Arenam obruisse Fluvius dicitur usque ad Canuti Regis tempora, Annum circiter 1008. Cedente vero tunc Mari, & Arenis indies latius atque firmitus semet efferentibus; conveniunt illic sub Edouardo Confessore & ingressu Normannorum, non tantum Norwicensis & vicini plurimi de Norfolkia Suffolciæque; sed Portuenses ipsi, qui hoc ævo soli habebantur Angliæ Piscatores, Galli, Belgæ, alique peregrini artem exercentes piscatoriam. Halecum enim nobilissima hic Europæ piscatura, & Septembris exitu (quem cum Danis igitur *Fifth-month* appellemus) per totos plerumque 40 dies, quod immunium illic hodie Nundinarum spatium est; primumque Papiliones & Taguria contra Jovem inimicum, sed ex licentia Regum, honestiora statim domicilia & ad fastum protinus exædificant. Tempore Gulielmi Rufi, Gulielmus Herbert Norwicensis Episcopus, (de *Loisinga*, id est, mendax cognominatus) Capellam in hac arena condidit pro salute Animarum illic appellentium: & post paucos annos, non longe à

• 499. juxta Stow, p. 158.

Capella, Ecclesiam perillustrem S. Nicolao dicatam, Piscatorum vero ditatam oblationibus & dotatam. Hinc statio illa, *Roda*, (i. e. statio) S. Nicolai appellatur. Novæ jam Villæ Rex Henricus I. anno Regni sui 9. Magistratum imponit, Regia functum autoritate, quem (de more Normannorum) *le Provost*, i. e. Præpositum appellabant. Et cum hoc sub regimine centenos florisset annos, Johannes Rex 18 Mart. Regni sui 9. Villam in *Burgum*, homines in *Burgenses* constituit, de *Jermuth* ntincupandos: & Burgum ipsum Burgensibus dimisit ad Firmam (ut loquuntur) Feodi in perpetuum. Ex concessione Henrici III. semuro claudunt & fossato, centum jugera continentibus, A. D. 1230. & in An. 1240. gubernatur Burgus per Ballivos suos.

Edouardus I. & II. aquatim illic nomine honestarunt *Portus Jermuth*, *Tro- numque* & sigillatim dictum *Coquet* pro oneratione & exoneratione Navium instituerunt. Edouardus III. (qui hinc Matis cognoscatur Dominus) Burgo locum in alto Mari, distantem 7 Leucas, vocatumque *Kirkley Roade*, univit in perpetuum; opibusque & potentia sic tunc *Jermutha* floruit, ut An. Dom. 1350. dicti Regni 25. ad Caleti obsidionem 43 emisit naves, & 1075 nautas; quod à nullo Portu Angliæ factum est, si *Fôwensem* excipias, qui licet quatuor naves plures exhibuit, nautas tamen 305 pauciores; Londino ipsi 25. tantum naves & 419 [nautas] exhibente. Frequentia populi ex hoc dignoscitur, quod paulo ante in uno anno 1341. 7000 peste rapiuntur; cum sub initio Jacobi Regis 5000 tantum illic æstimarentur. Possidet, quod sciam, nullas hodie hoc (ut alia) municipium possessiones; sed instar filiorum Æoli atque Thetidis (ut in Inquisitione, 10 Hen. III. compertum est) Maria & Quatuor Ventos. Repetit quod deseruit Mare; & cum aliquando Isthmus, quo situm est Oppidum, ad sextum protenderetur lapidem, hodie in secundo terminatur; & ne vicinior proruat ingenti cohibetur quæ singulis annis, 560'. [f. refarcitur.]

Retia illic Piscatoria, Londinum à Jermutha, i. e. 100 mill. porriguntur; quod cum in Parlamento 35 Elizabethæ palam audissem affirmatum, & ut certior fierem, sciolum convenissem; respondit, Compertum fuisse, suffectura ea ad totum spatium inter *Jermutham* & *Belgiam* occupandum, dum ab una navi ad alteram (piscatorum more) jungerentur. Mirabile quidem in nostris auribus; sed æstimata alias legimus ad 50000 libras Anglicanas.

Veterem *Garriononi* Sedem oblivioni tradidit alveum destituens Fluvius, Sedisque & Fluvii incerta vestigia. Videntur eam duo vendicare; *Burgh-castle* in agro Suffolciano, quod meridionali Fluvii lateri hodie incumbit; & à Boreali 4 distans mille passus *Castor* villula. Romanam ostendunt ambo speciem; illud quadrilateram oblongam castrametationem muro coronatam, sed remotiorem à Mari & loco paludibus & angustis ita impedito, ut equestribus male conveniat turmis; hæc in ipso litore, Muri etiam & Munitionis rudera prodens, campestri loco equitumque discursioni litoris præsidio, quod huic Comiti, huic Equitatu demandatum fuit, commodissimo. Interiora enim & mediterranea Comes alius tuebatur, Peditumque magis cohortibus quam turmis Equitum. Garianonum igitur *Castorem* pono, Camdeno licet *Burgh* arrisit. Conducit in sententiam nostram; *Castor*, nomen à Romanis sumptum; præsertim eum in tota Angliæ, nihil (quod sciam) hujus nominis reperietur non Romanum. Convenit & ipse locus, arenarum oppilationi & diversioni Fluminis opportunior, Ornithis & Euro-Aquilone imperantibus.

Orientem solem ulterius non videt Norfolkia: remeandum igitur ad Occidentem. E Jermutha exeuntes statim recepit *Burgh-Castle*, ad Hierum marginem, sed in Suffolcia collocatum, quo nos igitur non commorabimur. Si tum tamen dabimus & effigiem, ut Romanam fuisse intelligas: sed an Stablesianorum Equitum statio, cum Fluminibus & palustri impediretur solo, licet in acclivi castrum, non est verisimile. Si autem Cnobari Urbs fuit, & Monasterium (de quo Beda l. 13. c. 19.) à Judæis postea habitatum tradunt incolæ, & fidem augeat, ejus ducens ad introitum via antiqua, *Judeorum* hodie

Burgh-
castle.
Castor.

appellata. Tenebat aliquando hoc castrum Radulfus Filius Rogeri de Burgo per Serjantiam; quam cum dimisisset Gilberto de Weseham, & ille Regi Henrico III. eandem dedidisset, Rex 20 Aprilis, Regni sui vicesimo, coenobio S. Andreae de Bromholme, cum omnibus adjacentiis conferebat.

Reedham.

Ad Hierum cum Wavenio coitum, tertio à *Yermutha* milliari, è paludibus vix se erigit *Reedham* Villula, Barneorum Sedes, ab arundineo situ nuncupata, sed miraculoso Lothbroci nobilis Dani appulsu æque celebris ac infelix. Lugubrem suscitabo narrationem. Lothbrocus hic à stirpe regia, cum duos genuisset Filios, *Hinguarem* atque *Hubbam*, & solus aliquando in navicula, aves per vicinas Daniae Insulas, cum Accipitre depredaretur, correptus est subita tempestate per Maris latitudinem, & in Hierum ostium usque *Reedham* deportatur. Peregrinum incolæ (ut invenerant) solum cum Accipitre Eadmundo Regi East-Anglorum, cujus ad decimum inde Lapidem erat Castor Regia, detulerunt. Formam & Fortunam Viri Rex miratur, vultuque & moribus adeo serenis excipit, ut Lothbrocus subito Patriæ desiderio non teneretur. Capitur & aulicorum studiis, præsertim venatorio; quo ut fiat peritior, Berno se adjungit Venatori Regio, Magistrumque sic brevi superat, ut invidia percitus, hunc ille inter nemora seductum clam peremerit. Desiderato Lothbroco, canis quem alerat leporarius interfecti corpus vigil tuebatur, sed coactus fame alias atque alias Aulam petit: observatusque à ministris Regis, subsequentes ducit ad interfecti corpus. Bernus sceleris reus agitur, & judicio Curiae Regis, Lothbroci imponitur naviculæ, solus & sine omni instrumento nautico; fluctibusque & ventis creditus, Daniam fato advectus est. Cognita illic navicula, tormentis arguitur de Lothbroci nece; & se ut liberet, interfectum mentitur ab Eadmundo Rege East-Anglorum. Sævissimam jurant Hinguar & Hubba ultionem, collectoque 20000 armatorum exercitu, ductore Berno, totam East-Angliam ex improvise diripiunt. Eadmundum Regem brevi capiunt, flagris cædunt, confossumque deinde sagittis, & gladio detruncatum, inter Divos referendum excarnificant. Sic cum Rege animam efflavit regnum East-Anglorum, An. gratiæ, 870. die 12 Calend. Decembris, quæ Eadmundo hætenus celebratur in Calendario.

Ex his videtur *Reedham* Villam hanc parvam Magna *Yermutha* antiquiorem esse. Nam si habitatoribus frueretur *Yermutha*, cum Lothbrocus huc appulsus est, opem proculdubio clamore implorasset, attritusque fame & itinere, ulterius non perrexisset in Fluvio. Decurrit hinc Fluvius ad Romanam alteram munitionem, sed an *Ventam* illam Icenorum, qua nihil olim apud nos illustrius, ego subito non definiam. Mirum enim videatur & inconsultum, magni celebrisque Populi Metropolim ad ignobilem collocari Fluvium, cum in viciniis ipsis haberetur alius nobilissimus.

Hales.

Hinc inter *Waveney* & Hierum nihil quod sciam memorabile, donec sub decimo pene lapide ad *Hales* venieris; ubi Jacobus Hobart, Henrici VII. Attornatus, pluribus Familiis initium dedit.

Harleston.

Shelton.

Tasburg.

Norwich.

Pari distantia *Waveney* occupat Mercatorium *Harleston*. Inde in Septentrionem rediens, per *Shelton*, quod antiquos suæ appellationis Dominos nuper exiit, ad *Tasburg* itur.

In *Wenti* & *Hieri* commissura, & Wentio magis quam Hiero *Norwich* affidet: A *North* dictum quod boreale, & *Wic* quod Castellum, Vicum, Portum, Sinum seu Anfractum fluvialem, Saxonibus nostris significabat. Convenit igitur, quamcunque elegeris significationem; sed non æque omnis. Si de *Sinu* dixeris, Urbs non in Sinu Fluvii sed in Dorso ponitur, nec ad partem quidem borealem sed occidentalem magis, unde & *West-wich* potius quam *Norwich* diceretur. Saxo ipse Alfricus nostras, *Wic* exponit de *Castello*, & huc nihil accommodatius. Effecit enim ipsa ratio, ut *Castellum boreale* diceretur; cum ad tertium inde milliare versus ipsum Austrum, aliud haberetur Castrum regium, quod, extinctum hodie, *Caster* tamen appellatur.

Castor.

Si à Castro igitur nomen Urbis, Castrum nomine proculdubio est antiquius; &

& forte ipsa Urbe, quod in ejus habeatur meditullio. Sic Roma Capitolium. Licet enim Fossam propter formam orbicularem & immanem amplitudinem, Danorum censam vel Normannorum opus, Arcem utique Normannorum; Castrum tamen ab antiquiori seculo illic extitisse, & nomen suggerit, & Charta quædam Henrici I. qua, enixius ab Harvæo primo Eliensi Episcopo [rogatus,] Ecclesiam illam liberam facit *de jugo servitutis, & custodia, quam Castello Norwici debebat.* Imponi non poterat ista servitus, dum ab Episcopis, Monachis aut Monialibus possiderentur Terræ Ecclesiæ, si prius non fuisset debita; ideoque debitam fuisse dum in Secularium exstiterunt manibus (i. e. Tomberti Australium Gerviorum Principis, qui Æthelredæ Uxori suæ, primæ Eliensis Monasterii fundatrici, circiter An. Dom. 677. eas dedit) necesse est. In Ecclesiasticorum enim dum erant possessione, *magis* (inquiunt LL. Edw. Confess.) *in Ecclesiæ confidebant orationibus, quam in Armorum defensionibus.* Cap. 11.

Amplum etiam fuisse Norwici Castrum ante Normannorum ingressum, ex eo liquet, quod in Domeſdei legitur *Ibidem LXXXI Mansura vacua in occupatione Castell.*

Nobile etiam tunc fuisse videtur hoc Norwici Castrum, & velut totius Icenorum Provinciæ Metropolis, cui insignis ille Gerviorum Princeps, & tam insignis Insulæ illius pars (si non tota) deservirent. Primo etiam ad East-Anglorum Reges, postea Præsides, quos alias Aldermannos, alias Duces, alias Comites appellabant, pertinuisse. In instauratione igitur Monasterii, Æthelreda Fratris sui Adulphi Regis East-Anglorum opem implorat: & in translatione Monachorum inde *Betrichwordiam*, sub Canuto Rege, An. Dom. 1020. idem facit Leofinus Abbas à Turchillo Comite.

Quonam olim frueretur nomine, non me torqueo. Proculdubio vel Saxo-nico Nonpic; vel (quod Camdenus cedit) Britannico *Caer Guntum*; vel (ut Lhnydus habet) *Caer guynt*. In Historiis (fateor) raro occurrit vox alterutra; rarius quippe ipsa Historia. *Caer Guntum* vero quasi *Wentopolis*, i. e. Civitas ad *Guntum* Fluvium (quem Saxones more suo G in W mutantes, *Wentum* pro *Wuntum* dicunt, Romani *Ventam*.) Diceretur æque & *Hieropolis*, ab Hiero Fluvio. Sed quaeritur an hæc *Venta* illa Icenorum apud veteres & Antoninum? Negaveris forte & affirmaveris in æquilibrio.

A Norwico per adversum Flumen ad *Coffey* remigatur; ubi junior sed clara *Ferneghamiorum* Familia sedem obtinet luculentam; primogenita illa quæ ad *Somerle-town* in *Lothlingland* Suffolciæ non pridem floruit, jam extincta.

Prope hic ad Austrum, Wenti sinum alium videas Norwicensi similem: cujus cum in dorso pendeat, ut Norwicus, Villula, non à sinu nomen habet, sed à dorso, *Bouthorpe*, quasi à *Bout*, i. e. ambitu, & *Thorpe*, Villula.

Ab hoc sinu per *Intwood* quod Greshamos excussit nuper, ad *Kettringham* contenditur, Heveninghamorum Sedem, numerosam Equitum seriem proferentium.

Late hic in centuria (quæ à quatuor Montibus, ubi conyocari solet, nuncupatur *Wind-Forehow*) distendit alas *Wimundham*, vulgo *Windham*: Albeneiorum, Comitumque Arundeliæ, eorumque Hæredum, subinde ab ingressu Normannorum opulenta possessio, donec à Knevettis ad Henricum Hobart, Capitalem Justitiarium Civilium Placitorum, venditione devenit. Coenobio claruit Nigrorum Monachorum, à Gulielmo de Albencio pincerna Regis Henrici I. condito, Sanctoque Albano primitus ascripto: coenobium vero, crebris Albeneiorum Comitumque aliquot Arundeliæ sepulturis; ubi de Fundatore hoc Epitaphium:

*Hunc Pincerna locum fundavit, & hic jacet; illa
Quæ dedit huic domui, jam sine fine tenet.*

Huic radios *Hengham* porrigit; ubi Rex Æthelstanus 60 Hydas, i. e. Carucas Terræ Æthelwoldo dedit, Episcopo Wintoniensi, qui easdem cum Eadgaro Rege mox post annum 970. commutavit pro 40 Hydys & dimidio in Insula

Insula *Ely* & adjacentibus; cum jurisdictione & immunitate septem Centuriarum & dimidia, quæ hodie *S. Ethelred's Liberty* appellatur. Mercatorium est, & suos habuit Barones; sed clarius nomen à *Radulpho de Hengham*.

Kym-
berly.
Attil-
burgh.

A dextris *Kimberley* egregiis adornatur *Woodhouse* sedibus, à *Joanne Woodhouse* Equite nascentium.

A sinistris dum in Meridiem tendimus, merito nos moratur *Attilburgh*; ut sopitam ejus dignitatem suscitemus. Atque id in primis moneo: Nulquam occurrit appellatio *Burgi*, nihil innuens antiqui muniminis; puta Urbem, Castrum, Turrim, Vallum, Sepimentumve militare: Majoribus autem, quæ apud nos frequenter deprehenditur, *Castrum, Urbem, Civitatem*. Recte igitur *Littletonus*, *Quæ hodie* (inquit) *Civitates*, olim dicebantur *Burgi*. Nec pro Civitate, alia apud veteres nostros Saxonas seu recentes Germanos appellatio. Perhibetur celebri fama *Attilburgum* non solum fuisse Civitatem, sed & aliquando Regiam & Provinciæ Metropolim. Fama non deest antiquæ paginæ testimonium, si *Joanni de Bramis* (*Waldei Historiæ* ante 200 Annos auctori) steterit, (quod penitus non faciam.) Refert *Joh. Bramis*, Atlynge quendam, *Norfolciæ Regem* (qui sub Christi seculo floruit) in defensionem suam eam condidisse adversus *Rond*, *Thetfordiæ Regem*, Muro etiam cinxisse atque Fossa, & quatuor Portis quatuor Turres addidisse. Ductum insuper à conditore nomen. De Auctoris fide non digladiabor. Monachus fuit *Thetfordiensis*, & historiæ am transulisse refert, tum ex exemplari Gallico, tum & Anglico, verbis laborante utroque interdum exoletis: sed & Gallicum, pro genio Seculi & illius Populi multa invexisse.

Besthorp.

In confiniis *Attilburgi*, Villulam optimam (sic *Besthorp* sonat) Proavorum Sedem habitat *Eques* primarius — Et jam in tractum pervenitur, *Sylvis* divitem atque *Pascuis*, quo primas obtinet *Boecinum*, Oppidum vetus, ad *Isidem* Fluvium (ut *Lelandus* ponit) situm; & nunc *Buckenham*, non à *Fagis* (ut *Camdeno* visum) quæ in tota hac Provincia nusquam (quod sciam) reperiuntur, sed à *Cervorum* copia (quibus ut circumfulsa nemora olim abundarent, ita neque hodie destituta sunt) nomen habet: Nam hos item *Dani* atque *Saxones* *Bucken* vocant. Pinguior autem ista Comitatus portio, cum Villis plurimis adjacentibus, & Officio *Pincernæ Regii*, *Guhelmo Albencio* à Conquestore data perhibetur; castrumque ille *Buckenhamiæ* condidisse: cum tamen in excisenda Patria nostra inter *Normannos* nulla ejus mentio fiat in libro *Censuali*, qui *Domesdei* nuncupatur. Quandoque autem facta fuerit hæc donatio; certum est & fieri aliquando, crevisseque ejus posteros in *Comites Arundeliæ*; sed deficiente sub *Henrico III.* hærede masculino, insignis hæc Hæreditas inter foeminas dispartita est: cessitque jam Castellum de *Buckenham* cum nobilissimo Manerio *Wimondham* inter alia multa per *Tarsillos*, *Calios*, *Cliftonos*, ad *Knevettorum* Prosapiam, è qua hodie *Philippus Knevet* Baronetti gaudet novo titulo; sed Patrimonium vetus adeo labefactavit, ut vix *Buckenham* cum Castello remaneant integre.

Kening-
hall.
Garbul-
sham.

Inter Villas plurimas quas *Keninghal* hic trahit in suam ditionem, subest ad Austrum *Garbulsham*, alias *Garbelsham*, & *Garbolisham*, quod *Wilfricus Abbas* sextus *Eliehsis*, antequam Ecclesia illa in Episcopatum eveheretur, *Gudmundo Fratri* suo inter alia cessit, ad Vitæ spacium. Sed directa interea à *Normannis Angliæ*, *Hugo de Munford Miles Normannicus*, hæc & cætera cum à *Gudmundo* tum à Monasterio in perpetuum abstraxit. Cito vero transit *Garbulsham* (ut videtur) ad *Dominos Villæ Keninghal*, ejus in vestibulo jacet. Amplum enim hoc, & Sedes olim potentissimorum Baronum.

Lopham
Magna.

Hic limen *Norfolciæ* tnetur *Lopham*, è cujus latere velut ab eodem alvo enascentes discordes fratres, *Isis* minor & *Waveney*, Fluvii, contrariis alveis; hic per *Dille* in Oriente *Garienum* petit, ille per *Thetforde* in Occidente *Lennum Regis*; suo ambitu totum *Norfolciæ* australe Hemisphaerium complectentes.

Thetford.

Thetfordiam (antique *Tedford*) dici a supposito Fluminis nomine *Thet* vel *Sit*,

Sit. vix assentior. Saxonibus liquido sonat *Vadum Populi*, Æob enim *Populus* pro *Vadum*. Fuisse tamen Antonini *Sitomagus* non inficior; male licet de intervallo convenit à Venta Icenorum; vetustamque admodum, ut cætera omnia in *Magus* (quod *Urbem sonat*) desinentia. In antiquæ Tabulæ Fragmentis *Sinomagus*, alias *Sinomagus*; quod utrumque mihi Icenorum Urbem velut primariam olim, & Metropolim tractus istius, fuisse suggerit. Prior enim vox *Sinomagus* Ptolemæo quadrat, qui *Icenos* vocat *Simenos*. & vox posterior *Sinomagus* dicit *Qu. Icenomagus*. Nec Cæsari dissonat, qui *Icenos* (juxta Camdeni lectionem) *Cenos* vocat, ut alii Hispanos, *Spanos*. In Historiis autem non omnino sonuit *Sitomagus* nomen; nec ante Saxones recentiores *Tedford* ipsum; nec Jo. Brami Monacho adhibueris aurem de *Rondo* quodam strenuo istius Urbis Rege, vicinisque infestissimo, memoranti. Floruisse eum refert Vortigerni seculo, torpentibus & cedentibus jam Romanis, grassantibus Pictis & Scotis, enervatis Britannis, Saxonibusque cumularim irrudentibus. Sic ut de Britannia jam dicamus, ut de Israel olim, *Nullus jam Rex in Israel*. Occupanti enim omnia jam ceduntur, & ubique tot Toparchæ, (quos scriptores veteres appellabant *Reges*) quot Tyranni, munita possidentes Oppida vel Territoria. Prædones siquidem non Reges; de quibus recte Porphyrius impius apud Ninnium; *Britannia fertilis Provincia Tyrannorum*. Brit. pag. 36. Fertur & ex Historia anonyma fuisse olim Scholasticorum studium Thetfordiæ (Cajus, p. 148.) & fidem astruit ipse Beda, lib. 3. c. 18. de Sigeberto ita loquens: "Patriam revertis, ubi regno potitus est, mox ea quæ in Galliis bene disposita vidit, imitari cupiens, instituit Scholam, in qua Pueri literis erudirentur". Nollem fraudi esse Cantabrigiæ, quæ locum hunc ad suam trahit Academiam; priorem tamen agnoscit ipse Cajus — "Egregia olim Schola è plebeis; cum per aliquot secula ex edicto Gregoriano prohiberentur Angli Gymnasia celebrare propter Arianam & Pelagianam Hæresim, aliosque quosdam Britannorum Errores. V. *Caum*".

Veteres Urbis *Ærurnas* hodie prædicant Fossæ vicinæ militares, egestumque plurimo cespite Propugnaculum; Danorum potius quam Saxonum opus: proculdubio non Romanorum, qui nec tanta elatione nec tam exiguo ambitu Castra metabantur. Hanc, è Northymbria regressi (Anno circiter 870.) Hungar & Hubba, Danorum occupant conductores truculentissimi. Quibus dum congregitur orientalis nostræ Angliæ Rex piissimus Eadmundus, in fugam est coactus, obsessusque in Castello de Framingham, demum capitur, Sagittisque, Arbori alligatus, transfixus, & truncatus Capite: decerptumque deinceps Regnum ejus ad Occidentales Saxones est delatum. (Vid. *Holl. & Hunt.*)

Sub ingressu Normannorum, Arfactus, Capellanus Gulielmi I. & jam tractus hujus Pontifex, Episcopalem Sedem ab Helmhamia transtulit Thetfordiam, quod ab antiquo Municipium esset Episcopatus sui, & jam cautum esset Concilio, ut Episcopi Sedes suas non in Villis, sed in Urbibus collocarent. Secundus vero Successor ejus, Herbertus de Losinga, *Norwicum* detulit. Apud Episcopos tamen Norwicensis annos totos 500 mansit Thetfordiæ Dominium. Cum vero sub Henrico VIII. *Ricardus Nixus* Episcopus incidit in crimen diminutæ Regiæ potestatis (quod *Præmunire* vocant) bonisque omnibus & perpetuo carcere mulandus esset; gratiam ut redintegraret, universa Episcopatus prædia (viz. 30 vel supra, eximia Maneria) in Regis patrimonium transcripsit: acceptis (Glauci & Diomedis permutatione) Abbacia S. Benedicti de Hulmo cum suis, aliisque nonnullis prædiis. Quæ ut certius anneckerentur Episcopatu, decreto Parlamentario anni 27. Henr. VIII. sancitum est, ut Episcopus Norwicensis semper Abbas S. Benedicti de Hulmo habeatur, & e contra Abbas S. Benedicti de Hulmo semper utique Episcopus Norwicensis: Sic unus hodie nobis Abbas. Sed quoniam mentionem fecimus, tantæ cladis nobilissimi istius Episcopatus, casum referam, quo Regi tam obnoxius sit Episcopus.

Anno

Anno 25. Henrici VIII. Regiarum causarum Procurator *Billam*, quam vocant de *Premunire*, exhibuit in Banco Regis versus Episcopum Norwicensem (nomine *Richardum Nix*) tunc in custodia Marescalli existentem. Billa quæ dicitur *Indictamenti*, fuit hujusmodi: Quod in Villa Thetfordiæ in Comitatu Norfolkiciæ, ultra hominum memoriam, consuetudo extiterat; ut causæ omnes Ecclesiasticæ in eadem emergentes Villa, coram Decano Villæ ejusdem, qui ibidem peculiarem habuit Jurisdictionem, terminarentur: & quod nullus extra dictam Villam in placitum traheretur in aliquam aliam Curiam Christianam pro causis Ecclesiasticis, nisi coram eodem Decano: & si aliquis contra dictam consuetudinem tractus esset in placitum coram aliquo alio iudice Ecclesiastico, & hoc præsentatum foret coram Majori ejusdem Villæ, delinquens ille forisfaceret vi sol vii den. Et quod quidam N. sectam prosequeretur in Consistorio dicti Episcopi, pro re exorta infra dictam Villam *Thetfordiæ*, & præsentatum hoc fuit coram Majore, & quod ipse pro delicto isto forisfaceret vi sol viii den. Ob hoc Episcopus Majorem citat generaliter pro salute Animæ ad comparandum coram semetipso in *Ædibus suis Hoxoniæ*, in Comitatu Suffolciæ: & apparente eo, tanquam per Libellum, questus est ore-tenus de prædicta materia, injunxitque eidem sub poena Excommunicationis, ut quod præsentatum fuit, adnihilaret. Episcopus petit ut Consilium eruditum (sic Advocatos vocant) sibi assignaretur: & hi asserunt tum id quod præsentatum fuit, tum & ipsam consuetudinem vacuum fuisse: propterea non posse dici contra *Coronam & Dignitatem Regiam*; nec Majorem tractum esse ad Episcopum ad aliud examen: quod in nulla Curia examinari deberet. 2º. Curia Episcopi non intelligitur fore infra Stat. 16. Ric. II. sed in Curia Romana aut alibi, debet intelligi, extra Regnum.

Sed resolutum fuit per *Fitz-James*, Capitem Justiciarium & totam Curiam; quod, sitne consuetudo, sive id quod præsentatum est legitimum vel non; res, temporalis est & à lege communi determinabilis, non in Curia spirituali: & Episcopum igitur incidisse in crimen de *Premunire*.

2º. Quod verbum *alibi*, extendit tum ad Curias Episcopi, tum & alias Curias Ecclesiasticas infra Regnum, & sæpius ita judicatum esse per Curiam. Tunc Episcopus Indictamentum confessus est, & super hoc, *Port* secundus Justitiarius Judicium versus eum protulit: quod esset extra protectionem Regis, & quod Bona & Catalla ejus Regi essent forisfacta, Corpusque ejus Carceri mancipandum usque quo placuerit Regi.

De Episcopatu plura aliquot. Eum instituit S. Felix Burgundus, adductus à Sigeberto, East-Anglorum Regum primo Christiano; ut populo suo Apostolus foret. Sedem posuit *Dunmoci* in Suffolcia. Sed post tertium Successorem divisus est Episcopatus in duas Dioceses: altera cum 11 Episcopis *Dunwici* permanente, altera cum 12 *Elmhamiæ* in Norfolkia collocata. Direpta jam à Danis tota Regione, diu vacua mansit utraque Diocesis; sed coalescente sub Edwino Rege, Anno scilicet 955. Sede *Elmhamiæ* fruuntur 12 alii Episcopi. Hic Arfautus vero decimus tertius, Thetfordiam transtulit sub Guilielmo I. & qui post alterum successit ei Herbertus de *Losinga*, Norwicum usque; ubi prædiis (ut diximus) antiquis viduata, hodie novis fruitur. Tenuerunt autem Episcopi veteres Baroniam suam, 5 Militum Feodis; quibus jam Regi devolutis, quæro quonam fulcimine *Baronia* nititur, & quonam titulo Parliamentaria ingreditur Episcopus Comitatus?

Inter cætera Nobilitatis monumenta; celebris olim fuit hæc Urbecula folio Regum East-Anglorum, Episcopali Cathedra, & octo præterea Monasteriis, quod nec in primaria ulla reperitur civitate, nec in tantillo ambitu, ni ipsomet Londino; adeo ut vel nostram dixeris *ισόπολιν*, vel ex merito *Monachopolin*. In responsione vero quam dedit Norfolkiciæ Vice-Comes Brevi Regis Edouardi I. anno Regni ejus 9. emanenti, quo se fieri certiorum Rex præcepit, Quot Civitates, Burgi, & Villæ essent in hoc Comitatu; unica tantum memoratur Civitas, *Norwicus* scilicet; & duo pariter Burgi,

burgi, *b. e.* Jaremutha magna & Villa *Lenn-Episcopi*: nulla de Thetfordia mentione, quantacunque celebri vetustate. Proculdubio quod jam Burgi tantum essent habiti, qui Procuratores in Regni emitterent Comitibus seu Parliamentis: & Thetfordiensibus non indulta est hæc gratia ante annum quatenus è schedis liqueat Parliamentariis.

Inter Coenobitas qui hic floruerunt, Johannes Bramis Waldei historiam è veteribus Anglico & Gallico exemplaribus Latine concinnavit, quod in MS. Codice Collegii Corporis Christi Cantabrigiæ sic exponitur:

De Thetford Monachis Bramis edidit ista Joannes.

Nec taceam nobile illud monumentum nostrum, quod à seniorum dierum creatione, *Hexameron* (cum illo S. Ambrosii) inscribitur, à Monacho etiam Thetfordiensi, 300 hinc annis (ut scriptura suadeat) conditum perhiberi. Carmine, fateor, satis impolito, & pro genio seculi, leonino; egregia vero solertia & amplo volumine, rerumque cognitione multiplicium (ne Bartassus primus dicatur hunc induisse cothurnum) refertissimum. Addam Prologi ejus exordium; ut nostrum sciat Manuscriptum, qui in similem Codicem inciderit:

*Omnia disponens, nusquam metam sibi ponens
Virtus divina, stabilis manet absque ruina.
Sacrum Pneuma quidem, Genitor genitus, Deus idem
Fons, vita munus, numero sine, Trinus & Unus, &c.*

A Thetfordia in Boream redeunti, velut ad septimum lapidem, *Breclis* occurrat, exoletæ Breclisiorum Familiæ sedes, quam sub Anglo-Normannorum seculo, Willielmus de Warena, Comes Suffexiæ & Surriæ, Thomæ dedit Filio Godfridi, Filio Alberti Francigenæ, cum pluribus aliis Burnhamiæ, Grimstoniæ, &c. prædiis, quæ per foemineam Hæredem ad Cumptonos aliosque transiit. Tulit nobilis olim hæc Familia in feodali clypeo Dominorum suorum Comitum de Warena Symbolum, cyaneo colore in distinctionem in nigrum verso: hoc est, aream tessellatam (*Cheque* vocant) ex auro & nigro; ut de Calthorpi utique supra memoravimus.

Haud procul *Ellingham*: & hic à latere *Woodrising*, Southwellorum amplissimæ Familiæ (è qua Ricardus Regiæ Mariæ è Consiliis clauit) speciosa pariter & spatiosa habitatio.

Ellingham.
Woodrising.
Carbrook

Huic se adjungit *Carbrooke*, ubi Militum S. Joannis Hierosolymitani Prioratus fuit, plurimis per hanc Provinciam ditatus prædiis & clientibus feodalibus: Qui cum amplissimis illius Ordinis gauderent privilegiis, Crucis symbolum Domibus suis vicatim apponebant, ut sic ab aliis eorum innotesceret immunitas. Hoc autem cum multi alii olim factitarent, ut sub iisdem delitescerent immunitatibus, statutum An. 13. Edv. I. Westm. 2. cap. 13. ut prædia illa quibus falso appingerentur ejusmodi Cruces, in Domini feodalis transirent patrimonium.

Hinc per *Watton* Mercatorium ad *Merton* itur; quod à lacu nomen habet; decus autem à splendidis Ædibus, quas illic nuper exstruxit *Gulielmus Grey*, probitate & prolapia Eques splendidus.

Watton.
Merton.

Habentur in hoc tractu *Northwold*, *Methwold*, & *Hocwold*, i. e. — aquilonaris, medius, & angularis, quod in sinu Ifidis velut angulo concluditur. *Northwold* vero 12 æstimatum hydri, in illa permutatione de qua supra diximus, cessit Rex Eadgarus Episcopo Wintoniensi, qui hoc statim contulit Eliensi Monasterio. *Methwold*, ad Ducatum Lancastriæ pertinens, cuniculos alit laudatissimos, cui ex constitutione Leoffini Abbatis tempore Canuti Regis, obsonium reddebat annuatim duorum mensium: ut vicinum *Feltwell*, Munfordorum antiquæ & equestris Familiæ habitatio, quæ an ab Hugone de Monte Forti, qui cum Gulielmo I. Angliam est ingressus, plurimaque prædia tractu

Northwold.
Methwold.
Hockwold.

Feltwell.

tractu hoc invaserat, dicant qui rimantur Stemmata: confundi enim sæpius animadverto nomina: & in Charta Libertatum Angliæ ab Henrico I. concessa, inter testes venit *Rob. de Mundford*, ut in eodem libro Scaccarii habetur, Parisio autem *Rob. de Monteforti*.

Hæc ruris pars, ut occidentis reliqua, pascendis Ovis magnopere exponitur. Pleraque Villæ aut unum, aut duo, aut tria, interdum quatuor vel quinque millia nutriunt: ut intelligas Procures Angliæ apud Edw. I. de Vectigali Lanis imposito conquerentes, consulto affirmasse, *Opus Regni dimidium in Lanis consistere*. Dignum est vel nosse Leges quibus lanigerum hoc Pecus apud nos regitur: nam alibi non reperiuntur. Gregem instituere solius fuit Domini Villæ seu Manerii, numerum & species Ovium, stationesque designare: ubi locorum, & quo modo quibusque Legibus, cum in Hyeme tum in Æstate, pascerentur. Hyeme vero, non suas tantum, sed aliorum omnium terras stationem illam per semestre pascere. Cautas item erigere & circumducere sive stercorationis causa, sive alterius beneficii. Nihil horum alteri licitum, ne vel Ovem unicam in Allodio suo hic sustinere. Stationem istam *the Shepes Course* vocant; libertatem erigendi Cautas, *Fouldage*, & Saxonice *Falb-rocne*; stercorationem *Tash*; & hyemalem passionem *Shack* appellant. Reliqua desiderantur.



COMITES
MARESCALLI
ANGLIÆ.

ET
DE MILITE
DISSERTATIO.

Ab HENRICO SPELMANNO Eq. Aur.

COMITES
MARESCALLI
ANGLIE

ET
DE MILITE
DISSERTATIO.

AP HENRICO SPELMANNO Ed. Auct.

COMITUM MARESCALLORUM ANGLIÆ CATALOGUS.

QUIS sub Gulielmo Conquestore sit donandus *Marescalli* titulo, nemo (reor) certus affirmaverit. Non recepta enim videtur adhuc illa vox à Scriptoribus nostris: & si qui novisse se id Officium arbitrentur, adeo diffonis tradidere vocibus, ut Lectorem relegant dubitantem. Mentionem quippe faciunt de *Preposito Regalis Exercitus*, de *Principe Militie*, de *Magistro Militum*, *Magistro Equitum*, *Tribuno Militum*, *Tribuno rei militaris*, *Tribuno Exercitus*, &c. Sed cujus hi erant conditionis, *Constabulariine* an *Marescalli*, iidem an diverſi Officiales, Ducumve tertium genus aliquod & in se distinctum alias, non definiunt.

RADULPHUS DE WACEIO, apud Gulielmum^b Gemeticensem, Gulielmi Conquestoris pueri adhuc Tutor, constituitur & *Princeps Militie* Normannorum, & in mox sequenti capite altero *Magister Militum* appellatur.

GULIELMUS vero Filius OSBERNI, qui præ aliis omnibus Conquestorem excitavit ad Anglorum excidium, exercitumque ejus partem tertiam duxit; in Lib. MS. Coenobii de *Bello*, *Tribunus Militum* nuncupatus est, & alias *Tribunus Normanni Exercitus*: Quod de *Marescalli* munere (fateor) intelligatur. Huntingdonio (pag. 367.) *Dapifer Ducis*. Sed Eboracensis Fecialis (nescio quâ autoritate fretus, & in hoc à *Vincentio*, suo mastice, minime postulatus) expresse refert *Gulielmum Conquestorem* in Anno Dom. 1068. id est, Regni sui 1. vel 2. Gulielmum Filium Osberni, ob eximiam in Militia navatam operam, & Comitum Herefordiæ & *Marescallum* Senescallumque Angliæ constituisse. Certe non redarguam, eum fuisse *Marescallum*; Angliam autem tunc venisse in titulos *Marescalli*, *Constabularii*, aut *Senescalli* non assentiar. Occubuisse vero dicitur Osbernus An. Dom. 1072. i.e. quinto vel sexto Conquestoris.

HUGO GRANTESMALE à Fecialibus nostris in rimandis Genealogiis sub Conquestore inscribitur *Marescallus*. Sic in Genealogia Vice-Comitis *Montecute*, quo nixa fulcimine, non ariolor. Et in Genealogia *Gulielmidum*, quos *Fitz-Williams* appellamus; stirpis Protoplastum ponunt G. *Fitz-Williams* sub *Gulielmo Conquestore Com. Marescallum Angliæ*.

JOHANNES MARESCALLUS. Suggestere se videtur istiusmodi quispiam Henr. I. in Testatione *Brevis* cujusdam Regis Henrici I. quod in Registro veteri Ecclesiæ Cathedralis Norwicensis legitur, numero xv. *H. Rex Anglorum, Rogero Costard & Brunam Fil. Waring, & Edwardo, salutem. Præcipio, &c. quod Monachi de Norwic. &c. T. Johanne Mar. (lego Marescallum) apud Theotford.*

GILBERTUS (à forti arcu cognominatus *Strongbow*) secundus Filius Gilberti Comitum *Clare*, creatus fuit Comes Palatinus Penbrochiæ anno 4. Regis Stephani, & *Marescallus fuit Palatii* Regis; obiitque An. 14. Regis Stephani.

^a Hunt. 351. l. 59. ^b L. 6. c. 4.

Sepelitur in Abbatia Tinternæ. [Quare: nam hic, in petitione Margarete Filie primogenite & Cohæredis Thomæ de Brotherton Comitis Norfolc. exhibita, in Coronatione Ric. II. dicitur fungi officio Marecalli in Coronatione Henrici II. ut post aliquot in Marecallia Henrici de Percy latius patebit.]

Henr. II.

RICHARDUS DE HUMEZ sub hoc tempore, viz. sub Henrico II. dicitur in Chron. Abbatia de Bello. *Tribunus Regis.*

RICHARDUS COMES PEMBROCHIE, & Strigulæ, &c. fortissimus Regni Lemstria apud Hibernicos subactor, Dominus Marecallus, & savissimus teneri atque unici Filii exenterator, quod ab hostibus oppressus in patrium confugit præsidium. Sepultus Kilkennia An. 1176. Dubliniam à Sidneio Prorege transfertur, monumentoque donatus in Ecclesia S. —, dissectum præbet à latere Filium, ut aliquando vidimus.

WILLELMUS MARECALLUS REGIS, Filius Johannis, & Gilberti Nepos, accipiens in Uxorem ex tutelari dono Regis Richardi I. Isabellam Filiam & Hæredem dicti Richardi Comitis Penbrochia, à Johanne Rege in die suæ Coronationis Penbrochia Comes instituitur, & Marecallus Angliæ, ut quidam perhibent. Mihi autem non videtur hoc gavisus titulo. Nam Mat. Paris. Auctor cœtaneus, cum omni laudum genere profectus, magnamque appellat Marecallum, sed (quod meminimus) non Angliæ, verum Regis Marecallum. Erat præterea Custos Regis & Regni, necnon summus Angliæ Justitiarius; ubi plura quæpiam de illo annotavimus. Placeat hic tamen repetitum ejus Epitaphium:

Sum, quem Saturnum sibi sensit Hibernia, Solem

Anglia, Mercurium Normannia, Gallia Martem.

Obiit An. 1219. 4. Henr. III. & sepultus est in Novo Templo 17. Kal. Apr. relictis, præter quinque Filiis, totidem Filiis, qui in Marecalliam cæterasque Dignitates succedentes omnes, omnes sine sobole excefferunt, viz:

4. Henr. III.

WILLELMUS MARECALLUS, qui secundis nuptiis Eleanoram duxit Filiam Regis Johannis. Obiit 6. Apr. 1231. 15. Henr. III.

15. Henr. III.

RICARDUS MARECALLUS secundus Filius, Anglicarum Libertatum audacissimus Assertor (ut habet Matthæus Parisiensis), in Hibernia fortiter occubuit; 18. Henr. III.

18. Henr. III.

GILBERTUS MARECALLUS, tertius Filius (Clericali titulo primum additus) duxit Margaretam Sororem Will. Regis Scotiæ, & in hastiludio Hartfordiæ ab effrænato sui ipsius Equo interficitur 5. Kal. Julii, An. Dom. 1241. 25. Henr. III. Mat. Paris. hunc Comitem Marecallum ibidem vocat (p. 546.) Sepelitur in Novo Templo Londoniis. Stow in 25. Henr. III. An. Dom. 1241.

21. Henr. III.

WALTERUS COMES MARECALLUS (quartus Filius) *viam universæ carnis ingressus est pridie Nonas Decembris, aut (ut alii volunt) octavo Kalend. Decembris, &c.* (inquit Parisius in An. Dom. 1245. p. 665.) id est 29. vel ut alii volunt 30. Henr. III.

30. Henr. III.

ANSELMUS COMES MARECALLUS, quintus Filius Willielmi Magni Marecalli, obiit 22. Decembr. id est 18. (ut quidam perhibent) post Fratrem die, quinis suis Sororibus Hæreditatem cedens hærescendam.

31. Henr. III.

ROGERUS BIGOT, quartus Comes Norfolciæ illius cognominis, hoc deinceps modo in Marecalliam successit. Hugo Bigot Pater ejus, Comes Norfolciæ, vel (ut Parisius habet) Orientalium Anglorum; duxit Matildem primogenitam dictarum Cohæredum, & obiit anno 9. Henr. III. Domini nostri 1225. (ut refert Parisius p. 313.) omnibus Uxoris suæ Fratribus jam tunc

* Quare: Nam Camdenus, in Comitibus Penbrochiæ, ait de Richardo prædicto: *Hujus unica Filia Isabella Gulielmum dictum Marecallum (eo quod ejus Majores fuissent hæreditarii Marecalli Palatii Regii) Maritum eodem [Comitatu Palatino Penbrochiæ] adauxit.* Quasi Majores istius Willielmi, non Isabellæ Uxoris suæ fuissent Marecalli. [Nota Spelmani.]

viventibus; & *Marefcallus* ideo jure Uxoris (ut quidam innuit) non potuit salvari. Extincto autem *Anselmo* Fratrum novissimo, Anno 29. vel 30. Henrici III. divisaque anno 31. inter Sorores immensa ejus Hereditate, *Marefcallia Anglia* (cum Manerio de Hemsted in Comitatu Berteriae, cui e tenura id incumbit officium, & latifundis annui fimal valoris 1120 librarum) in Matildis cessit portionem. Marefcalliam in eodem statim anno, cum illius Virga dignitatis, Filio suo Rogero supradicto contulisse dicitur. Mat. Par. in An. 1246. qui 30. & 31. Henr. III. Eodem (inquit) anno multiplicatis intercessionibus, concessa est Marefcallis cum officio & honore, Comiti Rogero Bigod, ratione Comitissae Filiae Comitis Magni Willielmi Marefcalli primogenitae, Uxoris suae. Cave legendum videtur Matris suae: nam Hugo Pater ejus Filiam duxit primogenitam Willielmi Magni Marefcalli, ut supra declaravimus: ipse vero *Isabellam* Filiam Willielmi Regis Scotiae, & in Hastiludio conquassatus expiravit sine prole, An. 1269. Growus Anno 1246, Parisium secutus, Rogero duxisse ait Filiam Marefcalli: perperam.

ROGERUS BIGOD, ex Hugone Fratre Justitario Angliae, Rogeri Nepos in 53. vel 54. Norfolciae Comitatum & Marefcalliam Angliae succedebat. Henr. III.

Hic cum Regi Edouardo I. in auxilium Comitris Flandriae profecturo militiam contumacius detrectasset, Regem postmodum ad gratiam ejus redintegrandam, Heredem scripsit; sponte tamen an coactus, non satis liquidum. Sunt enim qui obaratum eum ferunt Fratri suo Johanni, expertemque liberorum eidem cedere post dies suos patrimonium statuisse. Fratre vero nimia deposcante debitum importunitate, indignanter convenisse cum Rege Anno 1301. hunc ut leniret, illum ut perderet. Regi patrimonium cum Marefcallia transcribendum: Ea tamen conditio, quod appositis annui valoris mille marcarum praediis, Rex ei Norfolciae Comitatum & Marefcalliam Angliae ad terminum vitae suae concederet; necnon & Soboli, si futura contingeret; Regi alioquin remansuram: & debita Rex praeterea solveret. Pactum alii impositum perhibent. Comes vero intra quadriennium moritur sine prole An. 1305. i. e. penultimo vel antepenultimo Regis; praeteritoque Fratre, Pacta ad Regem deferuntur. Walsinghamus hunc non semel *Comitem Marefcallum* nuncupat, (p. 72. l. 42. & 73. l. 37.) ut Matthaeus Parisiensis *Gilbertum Comitem Marefcallum*; & Willielmus Marefcallus appellatus erat *Comes* tempore Henr. II. non tamen cinctus fuit gladio Comitatus Strigull. donec Rex Johannes hoc ei praestitit in Coronatione sua: sic & *Gaufridus Fitz-Peter* gladio Comitatus Essexiensis (Vid. Hoved. p. 793. l. 52.) Cum tamen Comitris titulum ex concessione Principis nondum assecuti essent Marefcalli; exemplo *Tribunorum Scholarum* in Jure Civili, *Tribunus Militum* (qui nunc *Marefcallus* dicitur) nomen & honorem Comitris signavit. (Vid. Cod. Tit. de Comitibus & Tribunis; & P. Tribuni Scholarum.)

ROBERTUS DE CLIFFORD: cui Rex Edv. II. anno regni I. officium i. Edv. II. contulit Marefcalliae Angliae; ut patet Pat. p. 2. m. 19.

NICOLAUS DE SEGRAVE eodem constitutus anno, durante Regis bene- i. Edv. II. Placit. 9. Pat. p. 2. m. 22.

THOMAS DE BROTHERTON, quintus Filius Edouardi I. & secundo natus 9. Edv. II. toto, creatus est Comes Norfolciae ab Edouardo II. Fratre suo ex parte patris, 16. Dec. anno 6. dicti Edouardi II. & *Marefcallus Anglia* 10. Febr. anno ejusdem 9. Tenend. dignitatem primam, sibi & Heredibus suis de corpore suo, &c. alteram, sibi & Heredibus masculis de corpore suo legitime procreatis; ut testatur Charta Regia eandem concedens in haec verba: — Dilecto & fidei nostro *Thoma de Brotherton Comiti Norfolk*. Fratri nostro charissimo, *Marefcalliam Angliae*, cum omnibus ad Marefcalliam illam pertinentibus: Habendum & tenendum sibi & Heredibus masculis de corpore suo legitime procreatis, &c. faciendo inde nobis & Heredibus nostris servicia qua Progenitoribus nostris inde debebantur, antequam eadem Marefcallia ad manus Domini E. quondam Regis Angliae Patris nostri, per donationem & remissionem

- ſionem Rogeri le Bygod quondam Comitis Norff. & Mareſcalli Angliæ devenit, &c. Dat. per manum noſtram apud Lincoln, 10. die Febr. anno Regni noſtri nono. Obiit hic Thomas anno duodecimo. Edv. III. Gratia 1338. relicta ſobole, Edouardo, Margareta, & Alicia.
12. Edv. III. EDOUARDUS Comes Norfolciæ & Mareſcallus Angliæ, pupillari moritur in cuſtodia; tranſeunte ad ſorores patrimonio.
18. Edv. III. WILLIELMUS MONTACUTE. Vincent. pag. 340.
- THOMAS BEAUCHAMP decimus quartus Comes Warwic. Anno 1337. qui reſpicit Annum 11. & initium 12. Edouardi tertii, factus eſt (inquit Yorkus, pag. 577.) Mareſcallus Angliæ ab Edouardo III. durante placito. Obiit 34. ejuld. Edouardi: [Vide: nam hoc non convenit cum ultimis ſupra.] (Spelm.)
34. Edv. III. ROGERUS MORTIMER Comes Marchiæ II. Mareſcallus erat Angliæ 34. Edv. III. ut patet ex Original. 34. Ed. III. Rot. 16.
40. Edv. III. THOMAS BEAUCHAMP Comes Warwicensis, ad placitum. Dat. 16. Octob. 40. Edv. III. Pat. p. 2. m. 16.
48. Edv. III. EDMUNDUS MORTIMER, Comes Marchiæ, ſub annis noviffimis Edouardi III. Angliæ fruitur Mareſcalcia; ſed quo nixus jure, nondum reperi. Anno vero Domini 1376. Regis Edv. III. 50. juſſus à Johanne Duce Lancſtriæ (qui jam torpente ſenio Rege primas obtinuit) ut tuendæ Califiæ gratia in partes cederet tranſmarinas; veritus machinationis quidpiam ſibi impendere, Mareſcalciæ virgam cum officio Duci reddidit. Is lætanter hanc accipiens, eam protinus Familiari ſuo Henrico de Percy (quem Hotſpur appellabant) tradidit. Stow. ibid. — Dicitur Mareſcallus Angliæ in Commiſſione in Caſu judicandi inter Thomam Moore & Rad. Baſſet conceſſa Guidoni Brian & Richardo Stafford, anno 48. Edv. III. Pat. p. 2. m. 20. dorſ.
50. Edv. III. HENRICUS PERCY ſic ut diximus Mareſcallus ſalutatur anno 50. Edv. III. jam tum languſcentis & anno proximo morientis.
1. Ric. II. HENRICUS DE PERCY non de jure, ſed è Regis beneplacito designatus eſt, in Coronatione Richardi ſecundi, Mareſcallus Angliæ; pendente tunc de jure controverſia. Margareta quippe Filia primogenita & Hæres altera dicti Thomæ Comitis Norfolciæ in proceſſu facto ad iſtius Regis Coronationem, petitionem hanc exhibuit. *At tres honore Seigneur le Roi de Caſtele & de Leon Duc de Lancaſtre & Senefcall d'Engleterre, ſupplie Margarete File & Heire Thomas de Brotherton nadgairs Counte de Norff. & Mareſcall d'Engleterre d'eſtre acceptee al Office de Mareſcalcie ore al Coronement noſtre Seigneur le Roy, come a ſon droit Heritage apres la mort le dit Thomas ſon Piere, feſant l'Office per ſon Depute, Come Gilbert Mareſhall Counte de Strogoile fiſt al Coronement le Roy Henry ſecond. Ceſt aſſauoire de peſer debatz en meſon le Roy au jour de Coronement, & a faire liverree des berbergates, & de garder les oeffes del Chambre le Roy, pernant de cheſcun Baron & Counte faitz Chivaler à cel jour, un palfrey one une ſelle.*
- Super quo (inquiunt Membranæ Regiæ) audita Petitione prædicta, dictum fuit pro Domino Rege ibidem: quod officium illud in perſona Domini Regis in Feodo remanſit, ad assignandum & contulendum cuicunque ipſi Regi place-ret: & ſuper hoc auditis tam pro Domino Rege quam pro præſata Comitiffa pluribus rationibus & allegationibus in hac parte, pro eo quod videbatur Curia, quod finalis diſcuſſio negotii prædicti, propter temporis brevitatem, ante Coronationem prædictam fieri non potuit; Henricus de Percy ex aſſenſu & præcepto ipſius Regis assignatus fuit ad officium prædictum faciendum, percipiendo Feoda debita & conſueta, ſalvo jure cujuſlibet, & ſic idem Henricus officium illud perfecit. Hac ſcilicet vice; non diuturnus Mareſcallus.
- Sed quære, quo Margareta nitebatur titulo, cum officium Patri ſuo & hæredibus de corpore ſuo tantum masculis (ut ſupra patet) conferretur?
2. Ric. II. JO. FITZ-ALAN Dominus Maltravers. —
3. Ric. 2. THO. HOLLAND —

Sub ultima medietate Junii, cum Rex *Gulielmus IV* *Walworth* Praetorem Londinensem Eq. auratum constituit, creavit etiam (inquit *Stowus*) super Monte versus *Iseldoun* Comites Marefcallum & Penb. (p. 463.) [*Quære, quis hic fuit?*]

THOMAS Dominus de MOUBRAY, Filius & (post mortem Johannis Fratris sui) Hæres Elizabethæ utriusque eorum Matris, Filia & Hæredis Johannis Domini Segrave & Margaretæ prædictæ Ducissæ Norfolkiciæ, Filia & Hæredis Thio. de Brotherton prædicti; creatus est à Ric. II. anno Regni sui sexto Comes Nottingham. Et cum huc usque, *Domini tantum Marefcalli* in Chartis Regiis nuncuparentur, iste* primus per Chartam ejusdem Regis, dat. 12 Jan. Regni 9. titulo investitus est COMITIS MARESCALLI ANGLIÆ, tenendum sibi & Hæredibus masculis de corpore suo exeuntibus. Anno deinceps 21. ejusdem Regis, evehctus est in aviæ dignitatem, Ducem scil. Norfolkiciæ: sed haud multo post in exilium relegatus, Venetiis obiit, An. 1400. 1. Henrici IV. Suscitavit prolem, *Thomam, Johannem, Isabellam & Margaretam*, omnes Marefcalliciæ functos dignitate, vel in seipsis vel in sobole.

THOMAS HOLLAND Comes Cantii, Filius Thomæ Holland Comitis Cantii, & Fratris uterini Regis Ricardi II. ab eodem Rege anno Regni sui 21. creatus est Dux Surriæ: & ad cognoscendum de lite militari jam tum exorta inter Henricum Ducem Herefordiciæ, Appellantem; & Thomam Moubray Ducem Norfolkiciæ Comitem Marefcallum Angliæ, partem ream; mox itemque factus est hac vice *Marefcallus Angliæ*, Aumariense Duce tunc agente Constabulario. *Tork.* pag. 9. 284. & 528. *Hol.* 493. b. 40. 494. b. 30.

JO. MONTAGUE Comes Sarisburiensis.

THOMAS MOUBRAY, mortuo in exilio patre, Dux Norfolkiciæ & Comes *Marefcallus Angliæ* salutatur. Sexto vero anno Henrici IV. capite mulctatus, sine prole excessit.

RADULPHUS NEVILL Comes Westmerland. 21 Ric. II. & Richmundiciæ 1. Henr. IV. fuit Comes Marefcallus Angliæ. Obit 4. Henr. VI. 1425. *Tork.*

— *Vincent.* p. 340.

THO. ERPINGHAM Commissarius ad exequendum Officium Marefcalli Angliæ. Pat. p. 1. m. 30.

JOHANNES MOWBRAY, Thomæ senioris secundus Filius restituitur Comes Nottingham & Comes Marefcallus Angliæ, anno primo Henrici V. & deinceps anno tertio Henrici VI. *Dux Norfolkiciæ* in Parlamento restitutus est. Obit Anno Domini 1432. ut *Tork* dicit, p. 391. vel An. 1434. ut dicit p. 347. Vid. *Vincent.* ibid.

JOHANNES MOWBRAY Filius dicti Johannis, Dux Norfolkiciæ & Comes Marefcallus Angliæ, fato cessit anno primo Edvardi IV. Domini nostri 1461.

THOMAS HOLLAND, Marefcallus Angliæ, durante minore ætate dicti Johannis, factus anno 11 Henrici VI. Pat. p. 1. m. 20.

JOHANNES MOWBRAY, vivente patre suo, creatus est ab Henrico VI. Comes *Warren & Surriæ*, eidemque morienti successit Dux Norfolkiciæ & Comes Marefcallus Angliæ. Interiit An. Dom. 1475. 15 Edv. IV. unica suscepta Filia & Hærede, Anna nomine.

RICARDUS DUX EBORACENSIS secundus Filius Regis Edouardi IV, duxit prædictam Annam, Filiam & Hæredem ultimi Johannis Mowbray, & jure ejus fuit Comes Marefcallus Angliæ, quod hæc dignitas ad foeminas transiit Hæredes de corpore Thomæ Mowbray; non autem Dux Norfolkiciæ, quod hæc tantum masculis cedebatur. Iste Dux Ricardus cum Fratre suo Rege Edouardo V. à Ricardo Duce Glocestriæ, Avunculo eorum, nefandissima in Turri Londinensi morte obruitur, An. Dom. 1483. nullaque suscitata prole, ipsa etiam Anna extinguitur.

* Sed in Libro Feodario facti 20. Ed. III. Tir. Hund. de Febriggs, sic legitur: Prior de Maffingham tenet in Maffingham quartam partem Feodi Militis de Comite Marefcallo. — p. 26: [Spelman.]

I. Ric. III. GULIELMUS Dominus BERKELEY, Filius Jacobi Domini Berkeley & Isabella Uxoris suae, Filiae Thomae Domini Mowbray, Ducis Norfolciae, primi Comitis Marefcalli Angliae, anno I Ric. III. factus est Comes Nottingham & Comes Marefcallus Angliae, & 4 Henrici VII. Marchio de Berkeley. Exhalavit sine prole, anno septimo ejusdem Regis Henrici.

JOHANNES HOWARD Eques Auratus (Filius Roberti Howard Equitis Aurati & Margaretæ Uxoris suae, Filiae & demum Cohæredis Thomae Mowbray senioris Ducis Norfolciae & primi Comitis Marefcalli Angliae, utpote Confanguineus & alter Hæredum dictæ Annæ Ducissæ Eboracensis,) constitutus est à Ricardo III. Dux Norfolciae & Comes Marefcallus Angliae: proque Rege suo fortiter dimicans in Bosworthensi proelio, una cum eodem, votis & fato conjunctus, interfectus est. Extincto autem ad hunc modum, Ducatus ejus Norfolciae & Marefcallia Angliae ad Filium rediguntur; Filiusque ejus & Hæres Thomas Howard (qui à Richardo III. eodem tempore factus est Surregiæ Comes, quo & Pater Dux Norfolciae) licet Jure Gentium & Naturæ, Domini sui Regis & Patris Signa infecutus esset, à Victore tamen Rege Henrico VII. Arce Londoniensi mancipatus coercetur; sed nullo interea Marefcallia designato.

THO. HOWARD tertius Dux.

THO. HOWARD, Heros fortissimus (quem ut verbo non transeam *Virtuti Sacrum* prohibet) creatus est Surriæ Comes à Ricardo III. cum & Joh. Pater ejus in Ducem promoveretur Norfolciae. Ipsi vero Rege & Patre in Bosworthi proelio corruentibus; hic inter medias acies virtute dextræ sospes emicuit. Captus autem à Victore Rege Henrico septimo, in arcem Londonensem detruditur: sed ob eximiam Probitatem, Prudentiam, & Fortitudinem, ab eodem Henrico post triennium evocatur; & ad debellandum hostes suos in proelia *Lincolniense* — & *Bambregense* emissus, omnia adeo strenue gessit, ut in tractu boreali, tam ad compescendos Provinciales quam ad Scotos conterendos, Vicarius Regis designatur. Hoc ut auspiciis exequeretur, in ipso utriusque Regni limine se constituit; Anglis à tergo Clypeum tutelarem, Scotis à fronte Gladium formidabilem. Contritis his, & pacatis illis, ad Regem gratus regreditur: Fit Angliæ Thesaurarius, & ad paternam dignitatem Comitis Marefcalli Angliæ restituitur. Rex moritur; succedit Filius ejus Henricus VIII. qui in Galliam cum illustri Exercitu proficiscens, Nobilitatem pene omnem una abducit. Veteris autem hostis memor, Comitem denovo præficit cum armatis copiis tractui boreali; ut quæ in absentia sua moliretur Scotus, præsto oppugnaret. Rex Scotiæ Jacobus quartus, ansam ex absentia Regis tempestive comprehendendam ratus, Angliam cum ingenti Exercitu ingreditur. Occurrit Comes in limite: pugnatur acerrime. Rari Scotorum Exercitus, atque una Rex ipse, duo Episcopi, 11 Comites, 17 Barones, 400 Equites aurati, minoris autem Nobilitatis & gregariæ multitudinis 17000, eadem interea quamplurimis Anglorum. Captis deinde Scotorum Castris, cum Machinis pyreis & supellectili bellico, firmiterque omnibus ad regionis pacem conducentibus, Londinum regreditur; reverloque è Gallia Regi Henrico inimici (licet Fratris conjugalis) cadaver & opima spolia pacis & victoriæ symbola proponebat. Lætus Rex è duplici palma; illa quam à Gallis ipse fecerat feliciter, ista quam à Scotis Comes fortissime detulit; Comiti reddit Ducatum Norfolciae; latifundia confert: & ut ipse pariter & Nepotes de tanta victoriâ triumpharent, Emblemata Clypei interfecti Regis in diagonio Clypei Howardorum gerendum perpetuo designavit.

Pace inter Reges Angliæ & Franciæ composita, delegatur jam hic idem Dux Norfolciae in Franciam, cum Mariâ Sorore Regis Henrici, Regi Franciæ Ludovico desponsanda. Et transeuntibus deinde Rege & Regina Angliæ in Aquitaniam, ad salutandum Regem & Reginam Franciæ; hic totius Angliæ Prorex constituitur, & Mariæ Tutor Principis infantulæ. Tandem à Curia & Consiliis Regis per licentiam secedens octogenarius, residuo vitæ pie ac placide exacto, in Castro suo Framinghamiæ migravit ad Dominum.

EDOU.

EDOUARDUS SEIMOUR Dux Somerſetenſis, à Nepote ſuo Rege Edou-
ardo VI. & Theſaurarius factus eſt & Mareſcallus Angliæ; bellum jam adver-
ſus Scotos ſub initio Regis ſuſcepturus; Thoma Duce Norfolciæ, priori Ma-
reſcallo, Turri interea coercito.

JOHANNES DUDLEY Dux Northumbriæ.

THOMAS HOWARD in avitos Majorum titulos à Regina Maria poſt de-
liquium ſuſcitatus, quartus dux Norfolciæ hujus nominis, *Comes Mareſcallus*
Angliæ efficitur. Nuptias vero ambiens Maria Regina Scotiæ, cum à Regi-
na Elizabetha prohiberetur, fataliter recedit.

GEORGIUS TALBOT, Comes Salopiæ, qui in proſcriptione Thomæ Du-
cis Norfolciæ noviffimi, functus eſt officio magni Senefchalli Angliæ; poſt
ſublatus eundem, *Mareſcalli* inſignitur munere.

ROBERTUS D' EUREUX, Comes Eſſexiæ & Angliæ, Vice-Comes Bour-
chier, multisque præterea illuſtris dignitatibus. Populi ab ephebis deſiderium
fuit, etiam Aula, & ipſius aliquando Regina, *Elizabethæ*. In Hiſpaniam
miſſus cum exercitu, & una Carolus Howard Baro Eſſinghamiæ magnus An-
gliæ Admirallus, imperio pares, Calicem diripiunt, ſpoliumque ingens referen-
tes hic Nottinghamiæ Comitatu, ille Comitiva *Mareſcalciæ* Angliæ ad vitæ
terminum inſignitur. Altero poſt hæc anno, Comes Eſſexius in Hiberniam pro-
rex delegatur, ad Tironenſium motus compenſendos. Re verò parum inte-
gre adminiſtrata, Regina contrahit indignationem, quam ut mulceat, pro-
pere advolat: ſed deſperata ſpe, ad arma provocat; & auſis decidens, mul-
tatur capite. 25. Feb. 1600. Eliz. 42. Sic ad ſicum rediit *Mareſcalciæ*.

THOMAS HOWARD è Filio Nepos Thomæ ultimi Ducis Norfolciæ (Co-
mes Arundeliæ & Surregiæ, Comitumque omnium * Britannicorum Primi-
cerius; Baroniarum onuſtus titulis, Eques Perſcelidis, Regiæ Majeſtati à
Conſiliis, &c. Heros natus ad ornamentum Reipublicæ, veteris exemplar
prudentiæ & Romanæ gravitatis;) donatus fuit avita *Comitis Mareſcalli An-*
gliæ dignitate & Virga aurea, à Jacobo Rege, ad vitæ terminum poſſidenda.



DE
MILITE
DISSERTATIO.

MILES à mille, ut perhibent: nec probo, nec corrigo. Is autem est, qui in militiam legitime conscribitur: sed transfertur nomen ad civiles aliquot Magistratus, Officiales, Ministros, Famulos; de quibus dicemus, cum Militares absolverimus. *Conscripção duplex, Plebeia seu Gregaria, & Honoraria.* De *Gregario* Milite, plurimis licet honestato Privilegiis in Jure Cæsareo, nos hic non agimus. *Honorarius* est, qui honoraria aliqua solennitate in ordinem ascribitur militarem. Ejus multiplex est appellatio. *Brito* in Synonymis:

*Miles, Eques, Tyro, Tyrunculus, atque Quirites,
Atque Neoptolemus novus est regnator in illis.*

Valla & plures alii *Decurionem* nuncupari volunt: & addantur pari licentia Equitum Romanorum antiqua nomina: *Celeres*, sub Romulo & Regibus, à celeritate in proelio: *Flexumines*, à flectendis equis militaribus; qui & postmodum *Trossuli*, quod sine peditum auxilio *Trossulum*, Urbem in Tuscia, cepissent. Adjiciatur & recentius è Feudistis *Subvavasor*; ab Anglo-Saxonibus *Thanus*, & quod *Thanum* (vernaculumque nostrum *Knight*) Latine sonat, *Minister*. De prioribus dicant Academici; nos de reliquis suo loco. Nostra autem sic annectentur ad illa *Britonis*:

*Flexumines, Celeres, Decurio, Trossulus olim,
Nuperius Thanus, Subvavasor, atque Minister.*

Miles vero, à militantibus in genere: *Eques*, à specie; quod equo merebat. *Valla* tamen: *Miles* (inquit) *proprie qui pedibus militat, dicitur; Eques, qui equo.* Et dum *militis* nomen perperam his impositum causatur, quos dignatione afficimus, eos mavult *Decuriones* nuncupari; quod *Duarenius* nomen atque alii ad *Majores* item *Villarum* transferentes, vocem destituunt certa significatione. *Vallæ* tamen approbat *Bebellius* in Commentariis de abusione Linguae, & multa congerit adversus Interpretes qui hos appellant *Milites*: ut *Tiraquellus* item *Vir doctissimus* in consuetud. Picta. Tit. 10. §. ult. Glos. 2.

Tyro, Miles novitius; cujus tamen est (ut docet Cicero, Tusc. 2.) *ferre laborem & vulnus contemnere.*

Tyrunculus, tyro rudior.

Quirites; cur, non teneo: nullius enim ordinis fuit; sed commune Romanorum nomen, à *Quirino*, i. e. Romulo. Sed *Quirinus* ipse, à *quiris*, *Hastam* (Sabinorum lingua) significante, tanquam *hastatus* dicitur: Ovid. Fast. l. 2. v. 477.

— *Hasta, Quiris, priscis est dicta Sabinis.*

Quirites igitur dicantur *Milites* nostri, velut *Martii* & *hastati*. Certissimum est, vocem receptam esse 600 hinc annis pro *Milite honorato*; Ingulphumque Saxonem ideo dixisse *Quiritem degenerem* (ut *Virgilius*, *degenerem Neoptolemium*) pro *Milite* non legitimo.

Neoptolemus

Neoptolemus enim à νῆς, i. e. *novus*, & πόλεμος alias πῆλομος *bellum*; quasi νῆς πολέμου, *novus Bellator* seu *Miles novitius*; Pyrrhoque Achilles Filio ideo impositum nomen, quod ad Trojanum Bellum (a Knight) id est, *Puer* venerat.

Et Equiti adjungi solet *Aurati* Epitheton; non ab aureis Equitum Romanorum Annulis; ut multi suspicantur; sed ab auratis Calcaribus quibus insignitur dehuo (ut inferius dicemus) Eques hic noster. Franciscus enim Philelphus; qui floruit anno 1480. (Eques ipsemet auratus) appellationem primus comperit; ut in Lib. Epistolar. 24. cap. 1. ad Albertum Parisium proficitur. In hoc autem magis videatur necessarium; quod apud Gallos insigniores utique Magistratus (ut Loysæus mihi Auctor est) *Chevaliers*; apud Neapolitanos, sui quique Nobiles (ut Amiratus perhibet) *Cavallieri*, (id utrisque est *Equites*) appellentur; licet equestrem non obtinuerint Institutionem. Sed hos pariter *auratos* forsitan appellaverint. (24.)

Ferunt etiam nonnulli (mihi nescio an imponentes) Imperatorem aliquoties eruditionis & id generis causarum *Equites* instituere, qui non habentur *Militēs honorati*; ut item *Comites* inferioris gradus, de quibus diximus in suo loco: & Professores similiter Juris Civilis dici *Equites Auratos*, cum 20 annos in eodem studio emensi fuerint. Sed hæc ego per transensam, de exoticis.

Militem nostrum seu *Equitem Auratum* à Romano Equite non deducimus. Ille totus olim ad Militiam fabricatus est, hic ad rem civilem pariter; & sub Consulibus, ex Opulentia, non Virtute. Quicunque enim 400 valebat Sesteritia; i. e. monetæ nostræ veteris Sterlingorum 3000, novæ 6000, more & jure Civium Romanorum in Equestrem Ordinem conscribendus fuit. Propinquior videtur, qui sub Imperatoribus Baltheo cinctus est militari: hic vero tunc cultus non tam dignitatis fuit, quam cujusque Militis symbolum: Adeo ut *discinctus* pro ignavo dicitur & exuto militia, & inter poenas militares graviores habita. Virilis etiam Toga non ad classem aliquam, sed adultos omnes pariter attinebat. Ad Germanos provoco, ut cum suos nobis in plerisque mores porrexerint; in hoc etiam auctores fiant. Martis autem sic adibant limina. *Arma sumere* (inquit Tacitus) *non ante cuiquam moris, quam civitas suffecturum probaverit. Tum in ipso Concilio, vel Principum aliquis, vel Pater, vel Propinquus, Scuto Frameaque Juvenem ornat. Hæc apud illos Toga; hic primus Juventæ honos: ante hoc Domus pars videntur, mox Respublicæ.* Locum non intelligo de Ignobili; sed de eo cujus foret & Consiliis adesse Principum, & de rebus tractare publicis. Cum enim dixisset Tacitus in præcedentibus: *Germanos nihil agere non armatos*; subiungit illico, *sed arma sumere*, &c. ut citavimus.

Ecce igitur Germani Militis instituendi formulam. Primo, expetenda & expectanda Civium approbatio: Secundo, Consilii sententia: Tercio, symbolorum collator, qui est vel Princeps aliquis vel Magistratus honoris causa, vel Pater aut Propinquus emancipationis gratia. Quarto, symbolorum, (id est *Scuti & Frameæ*) collatio. Sic quinto, exultans telis Concilio egreditur *Miles legitimus*. Eques autem, non Pedes: nam *Scutum & Framea* sunt Equitis armatura, & plane integra, non Peditis, ut superius ipse docet Tacitus: *Eques quidem* (inquit) *Scuto Frameaque contentus est: Pedites & missilia spargunt pluraque singuli.* Hinc Tyroni istiusmodi duplex appellatio: *Miles*, à genere; *Eques*, à specie. Latine utimur utroque vocabulo; sed in vulgari Idiomate Galli, Itali, Hispani speciem tenent, sc. *Chevallier, Cavalliere, Cavallero*, à Latinorum *Caballo*. Germani, *Ritter*, à *ritten* equitare. Angli vero priscum secuti Saxonum, *Knighte* dicimus, quasi *Famulum* seu *Ministrum Militiæ*. Sæpe conspicitur antiquæ Institutionis specimen in Sigillis Anglo-Normannorum usque ad ætatem —, ubi Eques exhibetur, *Scutum* ad pectus, *Frameam* gestans ab humero dextro. Et originis vestigium in conferendis Feodis militaribus, quæ alias *Hastæ* traditione, alias *Baculi* velut

Hastæ

Hausta, in Jure Feodali transferuntur. Solebant enim Magnates latifundia sua in portiones dispartiri (quæ *Feoda* vocant) ad alendum singulos Milites; eademque ob Servitium & Subsidium in Bello Clientibus suis hoc modo concedere; adjuncto insuper annulo, ad notandum (reor) Fidelitatis Sacramentum, quo Vassallus Domino ratione Feodi tenebatur. Admissos sic in Militiam suam suos Milites appellabant; etiam si nunquam in militiam progredirentur, sed *Viscarios* mitterent. Hujusmodi fuisse eos censeo, de quibus in priscis nostris Annalibus Anglicanis sæpe legitur, talem venisse tali expeditione cum 100 vel 200 *Knights* in comitatu suo. Quidam male intelligunt de Equitibus Auratis; quidam verisimilius de Mililibus gravis armaturæ, quos Galli *Homes de Armes* appellant. Tuo utere judicio. Hi vero non videntur olim aliquando prioribus illis inferiores, cum & in Domini sui militiam *Baculi & Annuli* ceremonia admitterentur; tum & Patrimonium una acciperent variis Nobilitatum Privilegiis (ut supra videas in *Feodum*) quo Militarem Dignitatem splendidius tuerentur. Hoc enim Patrimonium, *Feodum Nobile* dicebatur; quod ad Nobiles solum, non ad Rusticos, non ad Burgenses vel Opifices transmigraret. Galli igitur Milites antiquos dividunt in *Chevaliers*, *Bannerets*, & *Bacheliers*. Cujacius exponit, *Equites*, Mello *Equites*, & *Vascellos* sive *Vassallos*: nisi malis (inquit) à Buccellariis ducere; quod equidem non probo. Teneat potius primam sententiam, *Bacheliers* idem esse quod *Vassallos*, i. e. Milites Feodales; non quod meam tueatur assertionem, sed quod ipsa res hoc loquitur, *Bacularios* seu *Bacillarios* non minus dici à *Baculo* seu *Bacillo* Feodali, quam *Banneretti* à *Bannerio*, *Equites* ab *Equo*, feodalibus.

Qui igitur fit, ut ceteri Equites (nam hi etiam Equo merebant) Feodo non dotati, *Bacularii* nuncupentur? Forte *Baculo* etiam velut *Hausta* in Militiam aliquando admitterentur; vel ex errore natum, pauciores in plurimorum transiisse appellationem, differentia ab Auctoribus non bene observata. Nam Germanis utique multos dici censeo *Fanlehen*, i. e. *Vexilliferos*, qui Vexillo non suscipiunt hodie Dignitatem. (*Quare.*)

Cum autem Militis instituendi ratio alia non esset, quam honoraria Candidati seu Tyronis in Militiam (ut præfati sumus) susceptio; præstari solita est apud omnes populos vel armorum aliquid conferendo, vel ceremoniam aliquam ad Militiam pertinentem adhibendo.

Romani, sub Imperio, *Cingulo* usi sunt militari.

Germani veteres (ut supra declaravimus) *Scuto & Framea*.

Longobardi *Arma integra* largiuntur. Sic Turismodus Rex Alboinum, Regis Audoini Filium, Turismodi Filii sui armis insignibus donat. *Paul. Diac. Longob. l. cap. 16.*

Salici *Balneo* usi sunt, cum aliquo genere Armorum, & Ritu sacro: *Balneo* scil. ut purgati intelligerentur à spurcitie Corporis & Animæ. *Du Tillet p. 431, &c.*

Anglo-Saxones *Gladium* ad Altare consecratum à Candidati collo suspendunt.

De Ætate Militari.

ÆTas Militaris, quæ Romanis *Virilis* dicitur, in exitu anni 16. pueritiæ apud ipsos habita est; Togamque ideo virilem (ut Germani olim *Arma* militaria) non sine Religionis ceremonia concedebant; ut mox videbitur. De *Germanorum* ritu, copiose admodum ex ipso Tacito in præcedentibus. Apud recentiores, Carolus Magnus Ludovicum Filium suum ^a jam appellentem *adolescencie tempora, Ense accinxit*. Aluredus Nepotem suum Æthelstanum ^b puerum adhuc præmature Militem fecit. Henricus I. Gaufridum Comitis Andegaviæ Filium, ^c *adolescencia primævo flore vernantem, quindecim an-*

^a Thegan. in *Vita Lud.* ^b Malmesb. de *Reg. l. 2.* ^c Jo. Moyn. *Hist. Norm. lib. 1.*

norum armis induit. Quid plura? Legitima hinc ætas militaris apud nos habetur annus decimus quintus; nec auxilium igitur ad faciendum Filium suum Militem quisquam à subditis deprecatur feodalis Dominus, ne quidem Rex. . . Valet tamen junior factus. Rex Eduardus VI. anno ætatis decimo; Henricus VI. quinto. Prandens olim aliquando Dublinæ juvenis apud D. Proregem Hiberniæ, vidi tenerum quendam Adolescentulum præ Militibus aliquot antiquis accumbentem; nuntiaturque mihi est, ni memoria meretrix, eundem ipsum fuisse quem Prorex alius è sacro Fonte suscepit, & in Cunis statim Militem fecerat, dum apud Patrem Infantuli forajito hospitaretur. Facto perhibet auctoritatem, quod in Juris nostri legitur Annalibus. "Audivi (inquit Thiring Justitiarius 7. Henr. IV. fol. 8.) Magnatem quendam, Filium, quem suscepit, ad sacrum deportasse Fontem, arreptoque statim Gladio, baptizatum Militem fecisse, Anglice hoc adjiciens, *Probus si poteris esto Miles, Armiger vero nunquam fueris.*" Nec mirum hoc in secularibus Ministeriis, cum in ipsis Ecclesiasticis, Hugo Filius Herberti Comitis admodum Juvenis parvulus, *qui nec adhuc quinquennii tempus explevisse videbatur*, in amplissimum Remensem Episcopus electus esset. Quanculacunque autem ætate factus est quispiam Miles, liber evadit à Domini feodalis potestate quoad Corporis sui ditionem, quam *Custodiam* vocant. Et peti videtur mihi ratio à Majoribus nostris Germanis, quam expressit Tacitus: *Ante hoc Domus pars videtur, mox Reipublica.*

De Evocatis ad Militiam suscipiendam.

ANtiqui Juris est, ut, in Regia Coronatione aliisque nonnunquam Solennibus, Rex Breve suum unicuique Vice-Comiti mittat; præcipiens, ut submoneat omnes in Comitatu suo, qui Censu funguntur militari, & non sunt Milites, quod tali die ad Regis se Præsentiam sistant, militarem suscepturi Dignitatem. Census hic sub Normannicis nostris Regibus quinque libris æstimatur; sub Henrico III. decem primo, deinde quindecim; sub Edv. I. viginti; hodie quadraginta. Excipiuntur tamen ab hac Angaria in Stat.—Edv. I. qui vel morbo diuturno, vel ære alieno, vel prole laborant numerosa. Brevis hæc est forma: *Rex Vice-Comiti Norfolcia salutem. Præcipimus, &c.*

Proclamatur & de more per Comitatum; sed venientibus & non venientibus à Carolo Rege evocatis fors plerumque eadem. Nesciebant enim qui venerunt, ubi suam exhiberent præsentiam, *eandemve facerent recordari.* Opinantur quidam coram Baronibus in Scaccario, quidam apud Comitem Marecallum, quidam apud magnum Camerarium Angliæ; & dum caligant singuli, deviant omnes. Tandem enim definit perhibere, in Cancellaria registrandam. Verba autem Brevis sunt, *coram Regis Præsentia*; & dum Regium sic opperiantur otium atque beneplacitum, facultatum partem non exiguam, forte etiam & ævi minuant. Vice-Comites autem summonitorum nomina Baronibus exhibent Scaccarii, hi vicissim Commissariis à Rege delegatis, ad componendum statuendumque de animadversione pecuniaria in evocatos (velut contumaciæ reos) sigillatim imponenda; quam si (gravem licet) non admiserint, vel subterfugiendo detrectaverint, è Terrarum suarum Usufructibus (quos *Exitus* vocant) Barones Scaccarii Regi addicunt. Primo termino 40^s. secundo 4^l. tertio 8^l. quarto 12^l. quinto 16^l. atque ita pro arbitrio assurgentes.

Fuit retroactis seculis animadversio à Commissariis imposita, satis levis; sed hodie gravis admodum: Tenuis enim fortunæ viri, olim 20, 30, 40 solidis plectebantur, hodie libris totidem; & ditiores nonnulli ducentis, trecentis, quadringentis.

* Flodoard. Remens. Hist. lib. 4. cap. 20. b De Germ. Mar.

De Modo creandi Militem honoratum: & primum de Cingulo Militari.

CUM in creando Milite maxime olim esset necessarium Officium Cinguli, de Cingulo quidpiam prælibandum. Ejus triplex genus: Civile *Zona*; Militare, *Baltheus*; Mixtum, *Cingulum indefinite*. Hinc Varro *Zonam* inter Vestimenta refert, *Baltheum* inter Arma. Cingulum utrisque convenit, & est tam Dignitatis & Magistratus, quam Militiæ symbolum; & à Trojanis seculis honorarium, ut Homero passim.

Romani *Veteres* Equitem honoratum instituebant Equo & Annulo aureo à Censore datis: *Inferiores* Milites qui à Cæsaris erant Comitatu, Cingulo donabant, quo à cæteris innotescerent Militibus. Fuit autem hoc è corio, atque inde *Baltheus* nuncupatum: nam *Balgh* & *Beltz* Germanis Pellem significant; ut item (quod Galli dicunt pro *Baltheo*) *Baudier*, *l* in *u* & *t* in *d* mutatis. Romanum enim nihil censo genuine quod per *th* scribitur. Huc autem id Propertii, lib. 4. Eleg. 11.

Præbebant cæsi Baltea lenta Boves.

Balthei seu Cinguli militaris officium fuit, *Munire*, *Ornare*, *Distinguere*, *Legionem notare*, & *Arma sustinere*.

1. *Munire*; ideo late compositum, aliàsque Bullis, aliàs Laminis (ne disstringeretur) firmatum. Virgil. *Æn.* lib. 12. v. 941.

— *Humero cum apparuit ingens*

Baltheus, & notis fulserunt Cingula Bullis

Pallantis pueri. — Humero (inquit) ut alibi, *Æn.* 8. v. 459.

Tum Lateri atque Humeris Tegeaum subligat Ensem.

2. *Ornare*; pro fastu militari & lateris dignitate, Auro, Gemmis, & insigni opere. — Virgil. *Æn.* 9. v. 359.

— *Rhamnetis & aurea Bullis*

Cingula —

Passim Homerus: & supra modum *Odyss.* xi. sed inferiores intueri. Luithprandus *Hist.* lib. 4. cap. 5. *Bos mira longitudinis & latitudinis habebat Balteum, qui multarum & pretiosarum splendebat nitore Gemmarum.*

3. *Distinguere*: aliàs Personas, ut Atridarum apud Homerum aurea *Balthea*; Hectoris, *puniceus*; Diomedis, *discolor*. Aliàs Dignitates & Magistratus; ut in *Vet. Epigramm.* Val. Probi Annot.

Aulica quippe Comes rexi patrimonia clarus,

Et mea patricio fulserunt Cingula cultu.

Hinc in Epilogo Edicti Theodorici Regis Italiæ, Cingulum pro Magistratu ponitur. *Nec cujuslibet Dignitatis, aut Substantiæ, aut Potentiæ, aut Cinguli, aut Honoris persona; contra hæc — esse veniendum.* Et apud Suidam, *ζώνη, τὸ ἀξίωμα*, i. e. *Cingulum tropice pro Facultate* (seu Autoritate) capitur, quod cincti ad rem gerendam sunt expeditiores. Inde crebro in Canonibus *Judex cinctus*. Erat namque Cingulum tam Palatinæ quam Armatæ Militiæ insigne. Ideo apud Cassiodorum & Jurisconsultos pro Magistratu dicitur & ejuldem administratione. *Variar.* lib. 6. Formul. 12. *Otiosi Cinguli honore præcincta dignitas*, i. e. Magistratus citra molestiam Dignitas. Et Imperator inferius Judices admonens de laudabiliter se gerendo: *Grave* (inquit) *pondus invidiæ est, splendore Cinguli claritate, & Morum lampade non hucere.*

4. *Legionem notare*: Isidorus *Origin.* lib. 19. cap. 33. *Baltheus Cingulum militare est dictus, propter quod ex eo Signa dependent ad demonstrandam Legionis militaris summam, id est, sex millium sexcentorum; ex quo numero & ipsi constituunt.*

5. *Arma*

5. *Arma sustinere*; Ensem & Clypeum; & singulare singularem: de quibus multa Homerus, qui & de Thoracis Baltheo meminit; Ajacemque Hectori Baltheum cum Ense dedisse, *Iliad.* 7. Sidonius Arvernorum Episcopus, qui floruit An. Dom. 470. suo aëvo hoc cultus attribuit, in Panegyri ad Anthem.

Aug. Car. 2. *Pectora bis tinguntur Zona. — Et supra, Bullis hostilibus asper*
applicat à dea fulgentem Balteus Ensem;
Inferitur Clypeo diadema manus, &c.

Romanis siquidem frequens, ut pluribus obiter hic inferius. De recentioribus etiam Bartholinus, *Austriad.* lib. 9.

Et mox gemmato Micronem annexere Balteo.
 Sic à veterimis seculis ad nostram ætatem (qua maxime floret) perductum vides cingendi hunc morem: de quo dicam ut Martialis, de *Parazonio*: XIV. 32.

Militis decus hoc est grati nomen honoris;
Arma tribulantium cingere digna latas.

Hinc *Cingulum* velut *Militia Dignitatumque* compendium, in eisdem confectis optatissimum.

Frisones cum cinctura Gladii colaphum impingunt; & hoc à Carolo Magno eorum Præfidi concessum ferunt in quadam Constitutione; ubi de *Militibus* agens: *Eis Gladium* (inquit) *circumcingat*; & dato eisdem, sicut consuetudinis est, *manu colapho*, sic *Milites faciat*, eisdemque firmiter injungendo præcipiat, ut deinceps more *Militum Sacri Imperii aut Regni Francie*, armati incedant. *Qui Frisones Signum sue Militie à dicta Potestate* (i. e. Præfide) *recipere debent*; in quo *Corona Imperialis*, in signum *sue Libertatis à nobis concessa*, debeat esse depicta: Ex Francis Mennenio Tit. ha. 112.

Anglorum erat Consuetudo, (non ingressis adhuc Normannis) quod qui *Militie legitime consecrandus esset*, vespere præcedente diem suæ Consecrationis, ad Episcopum, vel Abbatem, vel Monachum, vel Sacerdotem aliquem, contritus & compunctus de omnibus suis Peccatis, Confessionem faceret; & absolutus, Oracionibus & Devotionibus & Afflictionibus deditus, in Ecclesia pernoctaret, in crastino quoque Missam audiret, Gladium super Altare offerret, & post Evangelium Sacerdos benedictum Gladium collo Militis cum Benedictione imponeret; & communicatis ad eandem Missam sacris Christi Mysteriis, denuo Miles legitimus permaneret. Hæc Ingulphus Saxo, p. 901.

Sic fortissimus *Herewardus* (qui Normannis tantam facessivit operam) Miles factus est. Hanc tamen consecrandi *Militis* consuetudinem aspernati sunt Normanni; hæc *Militum legitimum talem teneant*, (inquit Ingulphus) *sed socordem Equitem & Quiritem degenerem*. Et quorsum, obsecro? Num quod ab Ecclesiasticis acciperint Dignitatem, non à Viris Militaribus? Certe Gulielmus Rufus (qui postea Rex evasit) non à Patre suo Gulielmo I. Rege Angliæ, sed à Lanfranco Archiepiscopo Cantuariæ, in vita Patris, Miles factus est, ut *Malmesburiensis* & *Parisus* testantur. Num quod ab Altari susceptum Gladium? Frequens inter ipsos Anglo-Normannos ritus sub Henrico II. ut perspicue refert Auctor coætaneus *Petrus Blesensis*, Epist. 94. *Sed & hodie* (inquit) *Tyrones Enses suos recipiunt de Altari*. Et rationem adjungit: *Ut præstentur se Filios Ecclesie, atque ad honorem Sacerdotii, ad tuitionem Pauperum, ad vindictam Malefactorum, & Patria liberationem, Gladium accepisse*. Quomodo tuebantur Professionem? Male, (ut hodie) quod pluribus Blesensis. Num denique, quod in Ecclesia pernoctarent vigilantes & poenitentes? Sospitavit equidem & pius hic usus ad Edouardi I. seculum, ut è Florilego deinceps videris.

Carolus Magnus, An. 791. Ludovicum Filium suum jam appellentem *Adolescentie tempora Ranespurgi Ense accingit*. Thegantis Episc. Trever. de Vita Lud. Pii, pag. 166.

Ludovicus ipse Imperator jam factus Filium suum Carolum [Calvum] Armis virilibus, id est, Ense cinxit, Corona Regali insignivit, &c. *Idem pag. 271. & Aimon. lib. 5. cap. 17.*

Alfredus Rex Anglorum Ethelstanum suum & Filio Nepotem Puerum adhuc pramature Militem fecit, donatum Chlamyde coccinea, gemmato Baltheo, Ense Saxónico cum Vagina aurea. *Mat. Gest. Reg. lib. II. cap. 6. pag. 49.*

Henricus III. Anno 1254. ad Natale Domini, Baltheo (inquit Parisius) apud Eboracum donavit militari [Alexandrum] Regem Scotiae, & cum eo Tyrones fecit viginti, qui omnes Vestibus pretiosis & exornatis, sicut in tam celebri Tyrocinio decuit, ornabantur, pag. 80. Intelligo, à Rege datis; nam sic idem Auctor in Anno

Et cum Legati Nepotem cingeret, 30 lib. annuatim redditus ei dedit hereditario, & cuidam alii censum pariter opulentum, pag. 530.

Edwardus I. ter centum simul preciosis donat Vestibus, nec Dignitatem tamen confert, donec in Templo nocte peregerint Vigiliis, ut è Florilego videmus. Pluries citaturus sum locum, semel habeatis integrum.

“Ad augmentandum igitur (inquit) protectionem suam in Scotiam, fecit Rex per Angliam publice proclamari, ut quotquot tenerentur fieri Milites successione paterna, & qui haberent unde militarent, adessent apud Westmonasterium in festo Pentecostes, admissuri singuli omnem ornatum militarem præter Equitatum, de Regia Garderoba. Consuetudinis itaque 300 Juvenibus, Filiis Comitum, Baronum, & Militum, distribuuntur Purpura, Byssus, Syndones, Cyclades aureo texta, effluentissime, prout cuique competebat. Et quia Palatium Regale, etsi amplum, tamen ad tot concurrentium turbam angustum fuit, apud Novum Templum Londini, succisis lignis pomiferis, prostratis muris, erexerunt Papiliones & Tentoria, quo Tyrones deauratis Vestibus se singuli decorarent. Ipsa quoque nocte in Templo prædicti Tyrones, quotquot poterat capere locus ille, suas Vigiliis faciebant. Sed Princeps Wallie, præcepto Regis Paris sui, cum præcellis Tyronibus fecit Vigiliis suas in Ecclesia Westmonasteriensi. Die autem crastina, cinxit Rex Filium Baltheo militari in Palatio suo, & dedit ei Ducatum Aquitaniae. Princeps ergo factus Miles, perrexit in Ecclesiam Westmon. ut Consocios suos militari gloria venustaret. Princeps autem propter turbam comprimentem non focus sed supra magnum Altare, divisa turba per dextrarios bellicosos, Socios suos cinxit. *Mat. Westm. An. 1309. pag. 458.*

Sine ut hic breviter notem Adnotanda.

1. *Protectionem.* Quam sub Quindena S. Johannis sequenti Rex iniit, & multis in Scotia truculenter gestis, Caricoli obiit anno proximo, i. e. 1307.

2. *Proclamari.* Non in forma Juris per Breve Regium Vice-Comitibus directum, ut non venientes multarentur; aut non venientes & non obtinentes Dignitatem, Placet, i. e. animadversionem Regi solverent pecuniariam.

3. *Tenerentur.* Tenebantur olim omnes liberi homines militare.

4. *Successione paterna.* Ergo Filius & Haeres Militis, qui Patri successurus erat in Hereditate, ex jure Miles etiam faciendus erat.

5. *Unde militarent.* Licet ex Patre Milita non esset ornatus; tamen si haberet unde se in Militia sustineret, suscipere tenebatur Dignitatem. Et hoc quidem olim fuisse videtur prædium quinque lib. sub ingressu Normannorum.

6. *Pentecostes.* Unum è tribus majoribus Festis, quibus præci Reges prodire solebant coronati, convocatisque Regni Magnatibus, de arduis consulere & statuere.

7. *Admissuri.* Suscepturi.

8. *Garderoba.* Vestiarium. Grecis inferioribus *τετραπύλον*, à Veste Germanorum *Roch.*

¶ [Reliqua pars Commentarii desideratur.]

Galli, præter *Cingulum* seu *Baltheum*, Gladium adhibent & aurata Calcaria, nihil sacri interposito. Bartholin. Austriad. 9. pag. 643.

Et mos gemmato Mucronem annectere Baltheo.

Recentiores plerique nullum tradunt symbolum; sed Gladio delibant alii scapulas & pectus Candidati, alii humerum velut percutientes tangunt, dicentesque, *Sois Chevalier au nom de Dieu*, Gladium apponunt osculandum. Qui humerum feriunt, colaphum impingentium tenent rationem; Candidato velut interminantes, ut deinceps nunquam ictum ferat inultus. Vidi aliquando senem ephebo Filio sic primum porrigentem Gladium: Sed hoc Gentilium more, non Christianorum; e quibus ictus olim aliquando Miles, respondit, *Non verbera tulissem, si non essem Christianus.*

Qui olim fiebant Milites.

Fiebant olim *Milites* ex solis Militibus vel Militiæ Candidatis; non Servis quantumvis eximiis, non Colonis, non Rusticis, non Burgensibus, non Mercatoribus, vel Togatis.

Non *Servis*. Hinc Regis *Filium* carpit Virgilius *Æn.* 9. v. 545.

— *Quorum primævus Helenor,
Maonio Regi quem serva Lycimnia furtim
Sustulerat, vetitisque ad Trojam miserat armis.*

Vetitis (inquit) *armis*: quod Helenor licet Regis Filius, ex *Serva* tamen natus, *Servus* esset: *Servisque* Jure Militari vetitum fuit arma ferre. Sic *Mercatoribus* atque *Rusticis*, sub quorum appellatione *Burgenses* veniunt, & *Coloni*, L. Julia de vi publica, & Constitutione Frederici Imp. lib. 5. Feud. *Togatis*; quod in Scholis suam habuere militiam, suas Dignitates. A Vetetum enim moribus alienum fuit, ad Gradus provocare suæ professioni non competentes. Doctorum primus, quos invenerim, in *Militiæ* dignitatem conscriptus est *Bartholus* de Saxoferrato Jurisconsultus celeberrimus; qui & cum dignitate *Leonem* accepit pro insignibus.

Inter Classes *Urbicas*, omnium apud nos primus militari Cingulo donatus est à Ric. II. Prætor Londinensis, non servati tantum Civis sed Regni causa, cum egregium Proditorem inter copias coram Rege exultantem Pugione occidisset; successoribus facto hanc obtinens dignitatem, Pugionemque inscribi Clypeo Civitatis.

Sunt & qui — ævo — primum ferunt Justitiariorum Angliæ Militis donatum titulo. Sed decipiuntur proculdubio; ut copiose viderint in Catalogis nostris Justitiariorum; licet & me alterius interdum nitentem fide non errasse alias haud asseruero. Sub Rege — omnes plerumque Justitiariorum Tribuna- les *Milites* salutabant. Henricus VIII. selectos tantum aliquot. Regina Elizabetha (tenax nimium in conferendis Honoribus) vix unum atque alterum, præter summos, Jacobus Rex catarractas aperuit Dignitatum, obrepentibus interea (ne asperius dicam) pluribus ignobilibus. Quippe cum in tota Anglia vix 300 reperisset Milites, ipsos statim ter tribus auxit centenariis. Mirum nostro ævo, antiquis vero satis assuetum. Henricus III. Nuptias Sororis suæ cum Alexandro Rege Scotiæ mille celebravit Militibus. Sed refert Paulus Æmilius, Philippum Pulchrum Regem Franciæ in proelium contra Edouardum III. Regem Angliæ, ter mille descendisse Militibus, *Baltheo militari* (ut ejus utar verbis) *virtutis causa donatis.*

Qui possunt Militem facere.

Eorum fuit Militem facere, quorum fuit Feodum dare. Nam qui Feodum dabat, Militem constituit, & Patrimonium insuper adject, quod daretur. Minus igitur est, Militem facere, quam & facere & alere. Quis Feodum dare possunt, exprimit Liber 1. de Feodis, cap. 1. Feodum (inquit) dare possunt, Archiepiscopus, Episcopus, Abbas, Abbatissa, Praepositus; si antiquitus consuetudo eorum fuerit Feodum dare. Dux, Marchio, & Comes similiter Feodum dare possunt, qui Regni vel Regis Capitanei dicuntur. Addit & Vavasores, sed minuta plenitudine. Videamus autem an in Milites utique facerent.

Ab Archiepiscopo: Lanfrancus Archiepiscopus Cantuariæ, Gulielmum Rufum quem nutriverat, Militem fecit, Patre adhuc vivente; uti referunt Malmesburiensis & Pariensis, hic in Anno 1087. pag. 13. ille pag. 120.

Sic Gossariæ, per Concessionem Archiepiscopi (Bremensis) primum se Rex (puta Henr. III. Imp.) arma bellica succinxit. Lambert. Schaffnab. in Chron. T. 313.

Ab Episcopo: Annales Dominicanorum Colmaricns. in Anno 1298. Venerabilis (inquiunt) Dominus de Leichtenberg Argent. Episcopus fecerat hoc anno ante Festum S. Michaelis Milites; quos omnes vestivit ad minus triplici vestimento; scil. Tunica preciosa, Surcotum nobili vario, Suchornam cum vario precioso. En in uno priscus hic ritus alius, cum dignitate vestimenta largiri. Sic Henricus III. apud Parisum. Et quidem triplicia: quod ex prisca Romanorum consuetudine ad Equites spectabat; Pediti enim simplex, duplex Centurioni, triplex Equiti dabatur.

Sic in Ecclesia S. Dionysii, die Dominica per manus Episcoporum armis accingitur Ludovicus Pius Imperator, qui paulo antea arma deponere & ante Altare ponere coactus est. Thegan. in Vit. ejus, pag. 150, & 153.

Ab Abbate: Sic apud Ingulphum Saxonem, Herewardus cum aliquot aliis cohortis suæ Tyronibus, à Brando Abbate Burgi S. Petri Patruo suo (sub An. 1068. id est, 2. Gulielm. I.) more Anglico, quem dedignati sunt Normanni, Miles factus est. Morem expressit Scorus in Annalibus vernaculis sub Gulielmo I. Anno 1061. Herewardus Anglo-Saxo sub An. 1068. (i. e. 2. Gulielmi I.) Patrualem suam Abbatem Petroburgensem adit, confessusque & absolutus, noctem totam in Ecclesia vigilans, orans, & jejuniis transigit. Mace Gladium offert super Altari, quem (finito Evangelio) consecratum, Abbas à collo Herewardi suspendit; benedictumque ipsam & sacra imbutum Eucharistia, Militem dimisit jam legitimum. Abbatibus vero Milites facere prohibuit Synodus Londinensis sub Anselmo Archiep. Cant. An. 1102. cap. 17. quod apud Eadmerum videas lib. 3. & Malmesb. lib. 1. de Gest. Pontif.

De Abbatissa & Praeposito, non habeo quod proferam. Forte quod antiquitus consuetudo eorum fuerit, Feodum dare (ut lex ait) aut non omnino, aut quidem parcius. Viro autem à Muliere suscepisse decus Militiæ, probum videtur.

Præter hos Ecclesiasticos, qui Feodum dare poterant, Sacerdoti etiam licuit inter Anglo-Saxones Militem facere. Sui enim Ingulphus: Post Evangelium Sacerdos benedictum Gladium collo Militis cum benedictione componeret, &c. ut supra.

Hæc de Ecclesiasticorum Militibus, quorum gesta Feodalia & privata multo accuratius olim mandabantur literis, quam Laicorum Procerum. Nemo vero opinabitur, Proceres Seculares, quibus totus in Bellis genius, minus vallasse in militaribus dignitatibus conferendis, quam Magnates Ecclesiæ, Belli in milites.

Ducem Burgundiæ celeberrimum instituisse Ordinem Militum aurei Velleris, nemo non novit: Et Ducem Britanniæ suos creasse Milites, inferius patebit.

Marchi-

Marchiones, qui aliud non sunt quam *Comites limitanei*, Comites vero primarii ordinis, parem sine dubio (si non supra) cum Comitibus potestatem habuerunt.

Ad montem, qui Castro de Lewes supereminet, se applicant (Barones;) ubi, ordinatis Alis & Arcubalistis, atque Peditibus bene dispositis, Gilbertum Comitem Glovernia Comes Leycestria Simon armis militaribus decoravit. Breviar. de Bello. (Sed hoc forte, ut à Principe Militiæ.)

In veteri MS. Codice Familiæ Sharnburnorum, legimus, quod in Militia Terræ Sanctæ, ævo Regis Ricardi I. *Will. de Ruslings & Alan de Sharnburne facti sunt Milites de manu Comitis Arundel. tertii. Et Andreas de Sharnburn similiter tempore Regis Johannis, de manu Willielmi Comitis Arundel. IV.* Et ne Comites hoc fecisse à Rege delegatos cogites; Giraldus Cambrensis in Itinerario Cambriæ (cap. 12.) refert, 15 Armigeros (tempore Henrici I.) Cingulo militari donatos & Armis Dominorum suorum decoratos à Constabulario Castri de Pembrock primipilo Arnulphi de Montgomery. Licuit forte Milites suos Feodales hac insignire dignitate, non alienos. (*Quare.*)

Sic in An. Gratia 1306. cum Ducem sibi constituissent Scoti *Gulielmum Waleys; Militia* (inquit Wallinghamius in Edv. I.) *donatus est Cingulo à quodam Comite regionis illius.*

Creabantur & à Civibus Belcarii, & in Provincia, (Joh. Tilius de Reb. Gall. lib. 2. cap. de Equitib. p. 180.)

Poterat & *Miles* (ut quidam asserunt) cum Militem facere, qui à Patre natus est Milite; quod hæc dignitas ad talem pertinuisse habita est, tam ex jure quam ex gratia; ut ex eo liqueat quod Edoardus I. proclamari fecit per totam Angliam, ut quotquot tenerentur fieri *Milites successione paterna, & qui haberent unde militarent; adessent gradum suscepturi.*

Sic Alexander Rex Scotiæ; licet ab Henrico III. Rege Angliæ Armis cingeretur militaribus, *Potuisse tamen* (inquit pag. 303.) *ipsa Arma suscipere à quovis Principe Catholico, vel ab aliquo Nobilium suorum.*

Franciscus I. Gallia Rex, *questre Balbeum & Ensem accepit à Petro Baido copiarum Prefecto in pugna Marigniana apud Insubres, 17 Kal. Octobr. An. 1515.* Chopp. de Doman. lib. 3. Tit. 26. Sect. 13. pag. 574. in med.

Ferdinandus Rex Portugalliaæ proelium initurus anno 1382. ab Edmundo Comite Cantabrigia Anglo, in proprio suo Regno factus est Miles.

Henricus VI. Rex Angliæ in festo Pentecostes An. 1424. Regni quarto, Miles factus est à Duce Bedfordia Subdito suo, Gallia Regente; cum jam Vitæ & Regni annum quartum ageret. *Hollinsh. eo anno.*

Ludovicus XI. quum ille Remis induta purpura Francici Imperii habenas capefferet, à Philippo Burgundiorum Duce ad hoc rogato Eques cingitur, 18 Cal. Sept. An. 1461. Chopp. Doman. lib. 3. Tit. 26. nu. 13. pag. 574.

Historia de Offa primo, qui strenuitate sua Angliæ maximam partem subegit: cui simillimus fuit secundus Offa.

Proceres consulunt Regi (Offa I.) ut Filium suum, moribus & ætate ad hoc maturum, militari Cingulo faciat insigniri; ut ad Bellum procedens hostibus suis horrore fieret & formidini. Rex, celebri ad hoc conditio die, cum sollemnibus & regia pompa Gladio Filium suum accinxit; adjunctis vero Tyrōcinio suo strenuis Adolescentibus generosis, quos Rex ad Decus & Gloriam Filii sui [Armis] Militaribus indui fecit & honorari. Fol. 3. a.

Militem autem à non Milite faciendum negarunt Veteres, quamvis à Rege. Cum igitur Ferdinandus Rex Portugallia An. 1382. in procinctu Aciei, viginti quatuor, vel eo supra, armis imbuisset militaribus; nunciatumque ei esset, minime illos fore Milites, quod Rex ipse nondum Miles cingeretur; Cincturam

Cincturam protinus ab Edmundo Comite Cantabrigiæ (qui in Acie versabatur) auspicatus, cæteros omnes redintegravit *Milites*. — *Differaõ que por elle naõ fero feito Cavalleiro post que rei fofet, naõ podia fazer Cavalleirs. Eutamo armon Cavalleiro o Conde Aymond e Camburg v fez el rei de novo os mefmos Cavalleiros que tintra feitos o outros. 1382. Chron. de Portug. reform. peto Duarto Nunez do haõ na vida del Fernando. hoio 226.*

Et licet justa evincat ratio, ut inferior semper omnem à superiore referat Dignitatem, minor à majore: supremæ tamen Potestatis Principi, qui culminis sui territorium securus non egrediatur, necessario competit, ut non solum ab inferiore consequatur hunc honorem, sed à Subdito etiam suo & Vassallo.

Hodie creandi Militis Privilegium apud supremæ Potestatis Principes tantummodo retinetur; & his omnibus æque competit, cujuscunque fuerint gradus aut fastigii. Majores tamen habentur Milites, qui à majore constituuntur Principe, & laudatior Consuetudo quæ antiquior. Danorum Reges (ut mihi auctor est Crantzius) ante — (qui Patrum nostrorum memoria floruit) creaverunt neminem. Nec Romani (ut dicitur) Pontifices, ante Paulum III. qui Nicolaum de Ponte Senatorem Venetum primum statuit. Quid Dux ipse Venetus, nondum reperi: nec Belgarum Ordines hoc aggressos. Successores vero Pontifices, suos quique Milites non tantum fecerunt; sed coacta pecunia (ut Sansouinus refert) Ordinis alicujus Clientelares, suo de nomine nuncupatos; Milites scil. *S. Petri, S. Pauli*; Milites — *Julii, Pii, Lauretanos, &c.*

Morem denique Imperatores Turcici amplexi sunt, ex quo Selimus truculentus ille *Gentilem Belinum* egregium Pictorem (Constantinopolim accersitum, ut Aulam Regiam depingeret) Torque & Codicillo Militiæ donavit. Quæritur autem an legitimus hic Miles? Sunt enim qui negant: & mihi quidem videtur legitimus (ut *Juliani* olim Milites) sed in Militiam conscribi Turcicam, non Christianam. De Principe excommunicato Dignitatem conferente, pariter judicandum Canonicis.

Judices sub Equitum Appellatione censerì: scil. Equites esse Palatinos.

A pud Romanos, *Judices* omnes qui non erant Senatores, ex Equitibus legebantur, & Equestribus igitur innotuerunt Symbolis, *Annulo, Equo, & angusto Clavo*. In Equitum vero appellatione non sunt cogniti vulgariter, quod minor hæc Dignitas sub majori illa delituit. *Tametsi Judicum non Equitum nomina ferrent* (inquit Alexand. ab Alex.) *tamen Equestris fuisse Ordinis, & inter Equites —, haud dubium est.* Qui in Provinciam itaque sub Imp. missus est Judex, Militum more aliàs *Chlamyde* donabatur, ut apud Cassiodorum videas, lib. 6. Variar. cap. 21. aliàs *Gladio* instruebatur, ut lib. 7. cap. 1. in Formula Comitivæ Provinciæ: *Gladio* (inquit) *bellico rebus paratis accingitur*. Sed addit inferius: *Arma ista juris sunt, non furoris, contra noxios instituta, ut plus pavor corrigat quam pœna consumat — Civilis est pavor iste, non bellicus, &c.* Hæc apud Romanos, & passim similiter. Cum enim Populus omnis Borealis (ad exemplum Germanorum) nihil facerent non armati, Magistratus omnis & Potestas Judiciaria penes militares retinebatur, ut in Wisigothorum LL. lib. 2. tit. 2. cap. 26. animadvertas, & in cæteris pluries antiquis Legibus. Divisus enim tunc Populus in Militares & Agricolas; his autem illos Jus dixisse, clarum est ex Tacito.

Cinguntur igitur Judices, ne non Milites haberentur; sed *Palatini* non *Castrenses*, quos sic distinguit vetus quidam apud Balbum:

Miles pungit Equum, sed Judex judicat equum.

* Lib. 2. cap. 29.

Intellige. Miles *castrensis* pungi Equum; sed Miles *forensis* seu Palatinus, i. e. Judex, indicat equum.

De Palatino Milite sic Fulbertus Carnotensis in Hymno Paschali Resp. S. I. pag. 204.

*Ipsum canendo supplicat
Regem pretemur Milites;
Ut in suo clarissimo
Nos ordinet Palatio.*

Hinc & Judex Miles Justitie nuncupatur: quod nostro tempore (inquit Balbus) potest esse una Dictio composita, & tunc pertinet ad quoddam Officium reddendi Justitiam. Sed quando sunt duæ partes, Miles Justitie dicitur quicumque Miles justus. Conradi igitur Faburient. vocabulo dicitur Miles justicius, ut sic à Justo distinguatur. Videtur Froissardus lib. I. cap. 177. hunc Militem Justitie, Chevalier de Loix, Militem Juris, appellare. De tribus locutis Militibus, quos Chevaliers vocat: dont les deux (inquit) estoient d'Armes, & le tiers de Loix: les deux Chevaliers d'Armes estoient Monsieur Robert le Clermont gentil & noble grandement, l'autre le Seigneur de Constan: le Chevalier de Loix estoit Monsieur Simon de Buffy, quem Gulielmus de Nanges ejus æqualis dicit fuisse Conseiller au grand Conseil, i. e. à Consiliis privati Consilii Regis, & primus Præses Parliamenti. (E Carolo Loyseau, p. 130.)

Dicuntur & Juris isti Milites apud Auctorem de la Romaunt de la Rose, Chevaliers de la Lecture, Milites Lectionis.

*Qui veulent par la foy defendre,
Quelque Chevalerie entreprendre,
Ou soit d'Armes, ou soit de Lectures,
Ou autres convenables cures.*

De Loca & Tempore Creationis.

Locus quo facti sunt olim Milites non solum solennis fuit propter rei Dignitatem, sed etiam sacer: Templum, Ecclesia, Capella; & in istis, pars præcipua, coram Altari. Prementeque aliquando turba (ut in Edouardi I. illis de quibus diximus) super ipsum Altare: Exemplis scitent quæ narravimus.

Tantæ etiam Solennitati dabatur utique solenne Tempus. Ludovicus Pius Imp. ab Episcopis cingitur Die Dominica in Ecclesia S. Dionysii. Thegan. pag. 250, & 253. Sed ad multorum Cincturam stantebatur & grandioribus Festum aliquod, quo ad Aulam confluentibus Regni Magnatibus, prodire Rex solebat Fastu Regio coronatus publice, ut in Natali Domini, Paschate, & Pentecoste. Sic Henric. I. Gaufridum Generum suum cum coævis in Festo Pentecostes Rothomagi auctoravit.

Henricus III. Alexandrum Regem Scotia & viginti alios ad Natale Domini, Eboraci.

Edouardus I. Edouardum Filium suum primogenitum & 300 alios ad Festum etiam Pentecostes, ut prædicitur.

Præter hæc, & insignes Vestimentorum Apparatus, lautissimis amicis excipiebant Conviviis; Ludisque Equestribus & Mavortis Tyrocinii coronabant Festivitatem. Unde vetus illa Lex, ut auxilium Domino Vassalli suggerant ad sumptus obeundos in Filium primogenitum faciendū Militem.

Contra morem igitur antiquum est, quod hodie nonnulli jactant, se creati in procinctu vel subdio Milites, alios sciolos vollicantes, qui in Regia (sub tapeete, aiunt) constituti sunt. Sed hortum est manu præstare potius quam mente, Marte quam Minerva. Veritas è præmissis liquet.

De

De Auxilio quod diximus suggerendo, illud apud nos observandum est, ut poscatur solummodo ad Filium primogenitum *Militem* faciendum; haud tamen antequam ætatis annum 15. exegerit. Nec tum (ut olim aliquando) ad libitum Domini; sed modo & quantitate constitutis: hoc est, 20. sol. Sterlingorum de quolibet Feodo militari, & tantundem pariter de quibuslibet viginti libratīs prædiū rustici, quod *Soccage* vocant. Hæc, Statuto Westm. 1. cap. 35. an. 3. Edv. I. Et iisdem Rex conclusus est limitibus, Stat. an. 25. Edv. III. cap. 11.

De Censu Militari.

Olim ingens fuit turba Militum, ut ex eo liquet, quod *Militaris Census* (*Feodum* vocant) centenis tantum solidis æstimaretur: tum vero quod huiusmodi Feodorum sexaginta millia supra in Anglia numerata fuerint, licet singula singulis non conferrentur. Patrimonia vero fuisse videantur iustorum Militum sub illis sæculis. Vetus enim Jus nostrum alios non agnovit Milites, cum Relevium Comitum 100 libris, Relevium Baronum 100 marcis, & Relevium Militum 100 solidis, definiverit; id est, juxta unius Anni valorem sui Feodi, exemplo quod in Lib. de *Feodis* reperitur. Et videtur insuper ad Militiæ apparatus tunc evocari, quotquot liberi & ingenue tenentes, de prædiis, centum annuatim numerabant solidos.

Crescente vero rerum pretio, Henricus III. evocari tam jubet, qui *decem libratas Terræ habebant*, ut *Parisi* utat verbis in An. Dom. 1256. Anno 37. Regni ejus, qui 15 libratas Terræ possidebant. *Chron. Hollinsh. p. 248. col. 1.* Edouardus I. anno suo primo, hos qui viginti libratas gaudebant. *Stat. de Mil.*

Henricus VIII. Regni sui 25. illos solum qui quadraginta libras de Censu prædiali percipiunt. *Stow. p. 946.*

Modus Exauctorandi Militem, quod Degradare nuncupatur.

Degradatur Miles, ademptis per ignominiam judicialiter suæ Dignitatis Symbolis: ut cæteri omnes gradu quolibet insigniti. Ut enim ascribi in Militiam nemo potuit non legitime; sic nec solvi à Militia. Solutionem autem *Missionem* vocabant Romani; & hæc erat triplex, *honestæ, causariæ, & ignominiosæ*. ff. de his qui no. inf. l. 2. §. ignominia.

Honestæ, cum Miles consueta stipendia meruisset, quæ erant in Prætorianis Cohortibus annorum 16, in aliis 20. Tacit. Annal. lib. 1. & L. a. de Veteran. Cod. Theod. & Cod. Just. l. 9. Veteran. fol. 474. d.

Causariæ, quæ propter valetudinem à laboribus Militiæ solvit. ff. de his qui no. inf. l. 2. §. ignominia.

Ignominiosæ, quæ in ignominiam Militis facta est; & duplex fuit. 1. Cum is qui mitteret, adjiceret nominatim ignominia causa se mittere: *semper enim* (inquit Lex) *debet addere cur Miles mittatur.* 2. *Sed si eum exauctoraverit, id est, Insignia militaria detraxerit, inter infames efficit, licet non addidisset ignominia causa se eum exauctorasse.* (Ibid. fol. 80. b. V. §. seq. de infamis quid, &c.) Hoc illud *Missionis* genus est, cui nos jam incumbimus; dabimusque igitur celebre Exemplum ejus ex Herodiano de Severo Imperatore; Prætorianos omnes Milites qui Pertinacem Imp. trucidaverant, pro Tribunali in campo sedente, recingendos exauctorandosque decernente. Post latam sententiam: *E. vestigio* (inquit Herodianus) *Milites Illyrici concurrunt, Prætorianisque breves illos Gladios detrabunt, quos auro argentoque ornatos in usum pompæ suspensos habebant. Tum Zonis, Vestituque, & cæteris Militiæ Insignibus per vim ablati, nudos ad unum exauctoratosque dimiserunt.*

serunt. In Severo Sect. I. p. 223. To. II. *Ignominia causa missis, neque in Urbe, neque alibi ubi Imperator est, morari licet* (ff. de his qui not. infam. §. Miles, fol. 80.) *Inde Amilius Macer, qui ignominia missus est, neque Roma, neque in sacro Comitatu agere potest.* (In l. Milites, §. ignominiosa; ff. de re milit.)

Hinc exauctorandi nostri Militis Aurati ceremonia. *Auctorari* autem dicitur, cum quis ad aliquid faciendum obligatur, ut Miles ad Militiam, &c. *Exauctorari* hic igitur est, ab obligatione militari solutum esse: quæ solutio & dignitatem tollit, & annexa Privilegia. Vulgo dicitur *Degradatio*, quia Gradum tollit. Fit igitur omnis *Exauctoratio* seu *Degradatio*, auferendo per ignominiam judicialiter ipsa eadem Insignia, quibus collata est Dignitas vel Gradus, cum in Secularibus tum in Ecclesiasticis; ut sigillatim ostenderem, si prolixitatis non paderet. Sequemur igitur quod in Thesi est, & omisissis Romanorum exemplis, recentiora quædam proferemus.

Memorabilis est præ cæteris omnibus male sana illa *Exauctoratio* Ludovici Pii Imperatoris Christianissimi ab Episcopis (An. Dom. 917.) *Compendii* perpetrata: *Longa est injuria, longæ ambages*, quas in Auctoribus illius seculi, & nominatim in Libello qui Tegano subjungitur, *Exauctoratio Ludovici Pii* nuncupato, fusc legas. Coggerunt autem mitissimum Principem (ut recentius Angli Ricardum II.) reatum quos imposuerant articulis subscribere, poenitentiamque cum tristissima confessione profiteri. *Post hanc Confessionem* (inquit Auctor) *Charulani suorum reatum, & Confessionis, ob futuram memoriam Sacerdotibus tradidit, quam ipsi super Altare posuerunt: ac deinde Cingulum Militiæ deposuit & super Altare collocavit, & habitu seculi se exuens, habitum Penitentis per impositionem manuum Episcoporum accepit; ut post tantam talemque poenitentiam, nemo ultra ad Militiam secularem redeat.* P. 147. & seq. Vides hanc *Exauctorationem* retrograde fieri eisdem vestigiis quibus sub hoc seculo ipsa facta est *Militis* (ut loquuntur) *Creatio* seu *Auctoratio*. A Viris Ecclesiasticis, in Ecclesia, coram Altari, præmissis confessione & poenitentia, solutione Cinguli militaris, ejusdemque repositione super Altare, unde in Auctoratione desumptum fuit; exuto etiam demum seculari, hoc est militari, habitu, ut nunquam postea ad Militiam esset redeundum.

Hæc de morbo illius tempestatis: recolitur tamen Imperator denuo, & Cingulo militari ab ipsis Episcopis (ut supra diximus) & omnibus aliis suis Insignibus.

Exauctoratur & circa hoc tempus, paulo antè, Odo quidam Ludovici familiaris, armis scil. ablati, ipsoque in exilium deportato. *Vit. Lud. Pii*, p. 238.

Notandum autem est, sub voce *Cingulum*, intelligenda arma omnia, & ipsam militandi facultatem: *ex quo habet Histories, Concilii, & Jure Cæsareo passim occurrere Cingulum tollere, amittere, perdere, & hujusmodi.*

Accedo ad viciniam, & notatam *Andreas Harkela*, Miles Auratus & Comes Carliolensis, sub An. Dom. 1313. seu 17. Ed. II. reus agitur coram *Gaufredo de Scrope* summo Justitiano Regi Tribunalis (ut quidam perhibent) vel *Antonio de Lucy* (qui eum comprehenderat) ut alii referunt; recte coram utroque de re Anglorum Scoto procedenda. Cuiusque lata esset sententia, ut spoliatus tam Comitiva Dignitate quam Militari, morte pro more Traditoris afficeretur; statutus est ad repagulum *Tribunali*, Ocreis, Calcaribus, pellito Collobio, vestibusque aliis Comitivis indutus. Prodiens tunc, ex mandato Antonii, Ribaldus quidam, Calcaria primum ab *Harkela* calcibus detruncat; fractoque super capite ejus Comitivo Gladio, quem in custodiam tutelamque Comitatus Rex ei præbuerat, vestibus spoliatur & Cingulo militari. Spoliatum denique sic alloquitur Antonius. "Ribaldus jam efficeris & tu ipse Andreas, qui nuper Miles fueras & vir dignitatis. Proditionem vero suspendio lues, tractus, evisceratus, & intestinis crematis, quadrifariam dissectus, capiteque minutus, &c. *Codex Vernac. MS. Ca. 195.*

Specimen aliud habes à *Radulpho de Grey*, qui cùm fidem Regi Edouardo IV. juratam fefellisset, captusque postea, in Castello Bamburgensi supremam subiturus esset sententiam; Comes Worcestriae, Constabularius Angliae, pro Tribunali sedens, reum his affatur: “Radulphe, statuerat Rex tuae prodicionis ergo, ut Calcaria tibi juxta ipsos calcaneos ab Archimagiro (quem praesto hic vides praecinctum linteo, & instructum cultro) discuterentur. Adfunt etiam ex mandato Regis (ut ipse hic vides) Rex Armorum & Heraldii alii cum tunica Insignium tuorum militarium, quam à corpore tuo dilacerantes avellent, ut tam Nobilitatis tuae & insignium Gentiliorum spoliareris, quam Dignitatis tuae militaris. En & alia tunica tuorum armorum reverso ordine depictorum, qua ad supplicium raptus indueris, tanquam ex jure ad te pertinente. Degradationem tamen tuam à militari Dignitate, Armorumque & Nobilitatis tuae ademptionem remisit, & pepercit tibi Rex, eorum memor, quae praclarus Avus tuus in causa illustrissimorum Praedecessorum ipsius Regis passus est.” Lato tandem judicio, ad supplicium tractus est truncatusque capite, ut *Stowus* refert: sed ut *Fabianus*, *tractus, suspensus, & quadripartitus*, An. Dom. 1464. Regis 4.

Confedente pro Tribunali regio in Aula Westm. D. Thoma Howard Comite Arundelio, summo Angliae Comite Marefcallo, auream ferente muneris sui Virgam, adjunctis à dextra & à sinistra — Franciscus à ministro ad repagulum Curiae adducitur, & parte interiori super scamno collocatur è regione D. Marefcalli, stans, & vestitu quo solet palliatus, sed Ocreis & Calcaribus auratis indutus, gladioque cinctus qui per Baltheum coriaceum à dextro humero ad finistrum dependebat latus. Facto silentio legebatur publicè ab Heraldio libellus, reatum suum & sententiam inferioris conclavis Parlamentarii continens. Quo finito, corrigia Calcariorum ejus discidit —; arreptaque Calcaria projiciebat in Aulam: deinde discidit Baltheum; curavitque ut Gladius in terram caderet: quia in militaribus Exercitiis lateri ignominiae sit, si qua pars Armorum ad terram ceciderit: ideoque Heraldorum juris est.



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HISTORIA
FAMILIÆ
DE
SHARNBURN.

Ex veteri MS. recensuit

D. HENRICUS SPELMANNUS.



HEN. SPELMANNUS LECTORI.

Non vulgare vides Monumentum; forte vi-
debis

Haud duo præterea talia, siqua vides.

*No vulgar Monument you see, scarce two
The like you'll find, if any one you do.*

Ex vincti MS. recentioris

D. HENRICUS SPELMANNUS.



HISTORIA

FAMILIÆ

DE

SHARNBURN.

In Ongo tempore post adventum Saxonum Paganorum in Angliam, fuit quidam *Thokus*, qui fuit Paganus Dominus de integra Villa de *Shenebruina*; & habuit unam Filiam, quam dedit cuidam homini strenuo vocato *Ingolfs*; & cum ea dedit ei totam Terram & Mariscum, quod ipse habuit versus occidentem prædictæ Villæ de *Shenebruina* usque Mare, ubi ipse *Ingolfs* quandam Villam fecit, & vocavit illam nomine suo *Ingolfsforp*. Et Sanctus *Felix* quando venit de Burgundia per consilium Honorii Archiepiscopi Cantuar. applicuit in partibus Estanglorum, quæ postea dicta fuit *Norfolchia* & *Suffolchia*, & convertit ad Fidem *Eorwaldum* Regem illius Patriæ, & baptizavit eum, viz. An. Dom.

Et postea per licentiam prædicti *Eorwaldi* Regis ivit per Mare versus partes occidentales illius patriæ, & applicuit apud *Babynglee*, & convertit ad Fidem Dominum & omnes Homines illius terre, & fecit ibidem edificari unam Ecclesiam, quæ fuit prima Ecclesia illius partis *Norff*. Et deinde ivit ad *Shenebruinam*, & baptizavit prædictum *Thokum*, & omnes Homines suos, & præcepit ei ut ipse faceret ibi unam Ecclesiam; & fecit ibi unam parvam Ecclesiam de Meremio, quæ vocabatur per longum tempus *le Stoke Chappel*, & postea fuit dedicata per prædictum Sanctum *Felicem* in honorem Apostolorum Petri & Pauli, & sic fuit illa Ecclesia in *Shenebruina* secunda Ecclesia illius partis *Norff*. & ita fuit prædictus *Thokus* effectus Christianus, & tota vita sua fuit Dominus de integra Villa de *Shenebruina*, & Hæredes ejus similiter post eum fuerunt Domini ejusdem Villæ usque *Canutus* Rex Danorum conquestus fuit Angliam. Quo tempore quædam puella de progenie prædicti *Thoki*, & Hæres sua linealiter descendendo, fuit Domina de integra Villa de *Shenebruina* prædicta, quæ desponsata fuit cuidam *Edwyno*, qui venit in Angliam cum prædicto *Canuto* Rege Danicæ, ut patet in sequenti. *Edwynus* Dacus venit de *Dacia* (i.e. *Denmark*) in Angliam cum *Canuto* Rege Danorum Anno Domini millesimo xiv. quando ipse *Canutus* debellavit cum *Edredo* Rege Angliæ, & post mortem prædicti *Edredi* ipse *Canutus* pluries pugnavit cum Rege *Edmundo Ironfyde* Filio prædicti *Edredi*; & ad ultimum concordati fuerunt, ita quod prædictus *Edmundus* haberet totam Angliam ex parte Australi *Thamysie*, & prædictus *Canutus* haberet aliam partem Angliæ ex parte Boreali prædictæ *Thamysie*: quo tempore idem *Canutus* dedit prædicto *Edwyno* Villam de *Neseshamie* integram cum toto Dominio integro & plures alias Terras in Comit. *Norff*. Et similiter dedit ei unam Planiciem non cultam sed vastatam, versus Orientem à prædicta Villa per sex milliaria Anglicana, ubi idem *Edwynus* invenit quandam Collem, & holum petrosum, & ibi ipse incipiebat edificare quandam Villam, & vocavit illam *Stonhogia*, quæ postea vocabatur *Stanhowe*. Et postea ipse *Edwynus* desponsavit quandam puellam, quæ fuit Domina de integra Villa de *Shenebruina*; & cito postquam desponsabat illam, ipse cepit prædictam Villam, quam ha-

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Nota.

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Nota.

- buit cum Uxore sua de *Canuto* Rege, tenendam de ipso infimul cum donationibus, quas illi prius dederat; & sic fuit ipse *Edwynus* Dominus integrè de prædictis Villis, & obtinuit omnia prædicta in pace quousque *Willielmus Ballardus* Dux Normannorum cepit Angliam super *Haraldum* Regem, qui coronatus fuit Rex apud *Westm.* An. Dom. millesimo LXVI. Et post Coronationem ipse dedit diversas Terras in Anglia diversis Hominibus, qui secum venerunt in auxilio ad Angliam conquiendam. Inter quas dedit *Willielmo de Albeney* Pincernæ suo, & *Willielmo de Warennia* Forestario suo, diversas Terras & Dominationes in Comit. *Norff.* & alibi in Anglia: & prædicti *Willielmus Pincerna* & *Willielmus de Warennia*, & omnes alii qui venerunt cum prædicto Conquestore, eiecerunt diversos Homines infra Dominationes suas omnibus de Terris & Dominationibus suis; inter quos prædicti *Willielmus Pincerna* & *Willielmus de Warennia* eiecerunt prædictum *Edwynum* de prædictis duabus Villis, & omnibus aliis Terris & Dominationibus suis. Propter quod idem *Edwynus*, & alii quidam qui eiectioni fuerunt, abierunt ad Conquestorem, & dixerunt ei, quod nunquam ante Conquestum suum, nec in Conquestu suo, nec post, fuerunt contra ipsum Regem in consilio & auxilio, sed tenuerunt se in pace; & hoc parati fuerunt probare quomodo ipse Rex vellet ordinare; propter quod idem Rex fecit inquirendum per totam Angliam si ita fuit, quod quidem probatum fuit; propter quod idem Rex præcepit, ut omnes illi qui sic tenuerunt se in pace in forma prædicta, quod ipsi retinerent omnes Terras & Dominationes suas adeo integrè & in pace, ut unquam habuerunt & tenuerunt ante Conquestum suum, & quod ipsi imposterum vocarentur *Drenget*; super quod idem Rex ad sectam prædicti *Edwyni* mandavit prædictis *Willielmo Pincernæ* & *Willielmo de Warennia*, quod ipsi deliberarent prædicto *Edwyno* omnes Terras & Dominationes suas, ex quibus eiecerunt eum, qui inde nihil voluerunt facere; sed prædictus *Willielmus Pincerna* dedit eidem *Edwyno* unum Messuagium, cccc acras Terræ, & tres Faldas in *Snetesham*, qui inantea vocabatur *Netesham*, tenendas de eodem *Willielmo Pincernæ* per certa Servitia; & retinuit ad opus suum & opus *Willielmi de Warennia* residuum prædictæ Villæ de *Snetesham*, unde ipsi feoffaverunt alios de hominibus suis qui secum venerunt de Normannia. Et prædictus *Willielmus de Warennia* dedit similiter eidem *Edwyno* unum Messuagium, cccc acras Terræ, & quatuor Faldas in *Sharnebourne*, cum Dominio ejusdem Villæ, quæ inantea vocabatur *Shenebruina*, tenendas per certa Servitia de eodem *Willielmo de Warennia*; & retinuit ad opus suum residuum ejusdem Villæ de *Sharneburn*, cum Advocatione Ecclesiæ, unde ipse feoffavit alios de hominibus suis, qui secum de Normannia venerunt. Et post istas Dominationes factas prædicto *Edwyno* per prædictos *Willielmum Pincernam* & *Willielmum de Warennia*, Dominus *Rad. de Ibrenays*, qui similiter venit in Angliam cum prædicto Conquestore & cui idem Rex dedit Terram de *Suthm.* cum membris in Comit. *Norff.* cepit prædictum *Edwynum*, & ipsum incarceravit, perque longum tempus in prisona detinuit, quousque idem *Edwynus* evasit per noctem extra prisonam, & abiit prædicto *Willielmo Pincernæ*, & fecit ei querimoniam de injuria sibi facta, & supplicavit ei ut ipse posset tenere de illo prædictam Villam de *Stanhowe*, qui noluit; sed ipse cum *Willielmo de Warennia* ceperunt prædictam Villam de *Stanhowe* in manibus suis, & prædictus *Willielmus Pincerna* dedit prædicto *Edwyno* unum Messuagium, cccc acras Terræ, & quatuor Faldas in prædicta Villa de *Stanhowe*, tenendas de eo per Servitium XL^{d.} per annum, & residuum ejusdem Villæ de *Stanhowe*, cum Advocatione Ecclesiæ, retinuit ad opus suum & ad opus *Willielmi de Warennia*, qui inde feoffaverunt alios de hominibus suis qui secum venerunt de Normannia, ut supradictum est. Et postea idem *Willielmus Pincerna* mandavit in Normanniam pro una Filia *Bartharda* sua, quam ibi procreavit ante adventum suum in Angliam, & illam dedit *Asceuro* Filio prædicti *Edwyni*, & per hoc fuit idem *Edwynus* in pace tota vita sua, ita quod nullus ausus fuerit postea ei injuriam facere nec damnum. Et prædictus *Edwynus* cito post prædictum Maritagium obiit in senectute sua

sua post multas tribulationes suas tempore prædicti Regis Willielmi Conque-
storis. De quo *Asceurus*, ut supradictum est, qui desponsavit Filiam *Williel-*
mi Pincerna Bastardam, ut supradictum est, & tenuit totam Hæreditatem suam
in pace post mortem prædicti *Edwyni* Patris sui, & obiit in senectute sua in
ultimis annis Regni Regis *Stephani*. Et ipse *Asceurus* procreavit de Uxore
sua prædicta tres Filios & plures Filias, & ipse *Asceurus* divisit prædictis tribus
Filiis suis totam Hæreditatem suam. De quibus *Galfredus* Filius prædicti
Asceuri primogenitus desponsavit *Etheldredam* Filiam *Rogeri de Derfyngham*,
& ipsa fuit pulcherrima Domina, quia inantea ipsa desponsabatur Domino *Ful-*
coni de Sharnburn, & similiter post mortem prædicti *Galfredi*, illa Domina
desponsabatur Domino *Rogero Rustens*, ut patet alibi; & iste *Galfredus* fuit
Capitalis Seneschallus *Willielmi* Comitis Arundellæ, Filii prædicti *Willielmi*
Pincernæ, de omnibus Terris suis tam in Anglia quam in Normannia. Et idem
Galfredus procreavit de prædicta *Etheldreda* Uxore sua tres Filios & tres Filias,
ut patet inferius; & idem *Galfredus* obiit die Sanctæ *Agathæ* Virginis, tempore
Regis Henrici II. Filii Matildis Imperatricis, & prædicta Domina *Etheldreda*
obiit die Sancti Cuthberti tempore Regis Johannis.

Ricardus secundus Filius prædicti *Asceuri* desponsavit *Amiciam* Filiam
de *Lynnea* veteri in partibus *Merslandiæ*, ex parte occidentali Ripæ, & cum
illa habuit ibi magnam Hæreditatem, de quibus *Robertus*, qui vendidit totam
Hæreditatem, quam habuit in partibus *Merslandiæ*, antecessoribus *Jacobi*
Baynard, de quo *Roberto* exivit *Ricardus*, de quo *Robertus*, de quo *Petrus*,
de quo *Sabina* & *Petronella*, & plures Filii & Filia; & prædicta *Sabina* de-
sponsata fuit *Johanni* Filio *Philippi Pynchom* de *Castle-Rising*, & prædicta *Pe-*
tronella nupta fuit *Johanni* Filio *Radulphi Panton* de *Dockyngs*.

Robertus tertius Filius prædicti *Asceuri* obtinuit multa Beneficia Ecclesiasti-
ca in diversis locis cum Decanatu *Lennæ*, & habuit tres Filias. Unde prima
Filia desponsabatur cuidam *Willielmo* Filio *Radulphi de Snetesham*, & secunda
Filia nupta fuit cuidam *Hamundo de Snetesham*, & tertia Filia nupta fuit cui-
dam *Waltero de Snetesham*. Et de prædictis *Willielmo* Filio *Radulphi*, &
Uxore sua Filia prædicti *Roberti* Filii *Asceuri*, exivit *Radulphus*, & plures Fi-
lii & Filia; de prædicto *Radulpho* secundo exivit *Willielmus*, de quo quædam
Puella quæ nupta fuit *Galfredo de Say de Derfyngham*, de quibus *Galfredus de*
Say, qui vendidit totam Hæreditatem, quæ ei descendebat post mortem Matris
suæ, cuidam *Hervio Underburg de Bennham* & aliis hominibus de *Snetesham*;
& de prædictis *Hamundo* & Uxore sua secunda, Filia prædicti *Roberti* Filii
Asceuri, exivit *Galfredus*, de quo *Alanus*, de quo *Galfredus*, de quo *Wyme-*
rus, de quo *Robertus Wymer*, qui vendidit totam Hæreditatem suam in *Sne-*
tesham, *Sharnburn*, & *Dockyng* Domino *Johanni de Ingoldesthorp* & aliis
hominibus. Et de prædictis *Waltero* & Uxore sua tertia, Filia prædicti *Ro-*
berti Filii *Asceuri*, exivit *Galfredus*, de quo *Galfredus*, de quo *Johannes*, qui
vendidit totam Hæreditatem suam in *Stanbowe Andree de Sharnburn* secundo,
& totam Hæreditatem suam in *Snetesham* & *Sharnburn* vendidit aliis diversis
hominibus, de quo *Thomas Bulwer de Snetesham*.

Modo dicendum est de *Etheldreda*, quæ fuit Uxor *Galfredi* Filii *Asceuri*:
Rogerus de Derfyngham fuit quidam dives ex nobili progenie, & ha-
buit unum Filium, qui vocabatur *Robertus de Derfyngham* post mortem pa-
tris sui, & unam Filiam pulcherrimam quæ vocabatur *Etheldreda*; & Dominus
Fulco de Sharnburn in equitando versus *Lennam* vidit illam stantem juxta viam
in *Derfyngham*, & ipsam concupivit propter pulchritudinem suam, & tam cito
quam ipse rediit in domum suam, ipse mandavit prædicto *Rogero*, ut ei vellet
dare prædictam *Etheldredam* Filiam suam in Uxorem. Quo letaliter conce-
dente, & cum ea multam pecuniam promittendo, dictus Dominus *Fulco* ipsam
desponsavit, & ex eadem *Etheldreda* procreavit Dominum *Eudonem de Sharne-*
burn, & plures Filios & Filias. Et de ipso *Eudone* exivit *Galfredus* & plures
Filii & Filia; & idem *Galfredus* desponsavit *Rosamundam* Filiam *Will. Filii*
Roberti

Asceurus.

Primus
Filius As-
ceuri.

13

Secundus
Filius As-
ceuri & ex
jus exitus.

14

Tertius Fi-
lius præ-
dicti As-
ceuri.

15

16

17

Primus
Maritus
Etheldre-
dæ, & ex
jus
exitus.

- 18 *Robertus de Ingoldsthorp*, Consanguineam Domini *Thomae de Ingoldsthorp* senioris, de quibus *Will.* & plures Filii & Filiae, de quo *Galfredus* & plures Filii & Filiae, de quo *Willielmus*, *Thomas* & *Johannes* & duae Filiae; & praedicti *Willielmus*, *Thomas* & *Johannes* obierunt, & praedictus *Willielmus* post mortem Filiorum suorum dedit Domino *Andree de Sharnburn* quarto totam Haereditatem suam. Et post mortem praedicti Domini *Fulconis* praedicta Domina *Etheldreda* desponsabatur *Galfredo* Filio *Ascuri*, ut supradictum est, qui ex ea procreavit tres Filios & quatuor Filias, ut patet inferius. Et post mortem praedicti *Galfredi* Filii *Ascuri*, praedicta Domina *Etheldreda* desponsabatur tertio Domino *Rogero de Russeyng*, qui fuit capitalis Senescallus *Willielmi* Comitis *Arundelliae* tertii, & idem *Rogerus* antequam desponsavit praedictam *Etheldredam* factus fuit Miles in Terra Sancta de Jerusalem tempore Regis *Ricardi*, de manu praedicti Domini *Willielmi* Comitis tertii. Et post reditum suum de Jerusalem ipse desponsavit praedictam *Etheldredam*, ut supradictum est, qui ex ea procreavit Dominum *Willielmum* & plures Filios & Filias. Et de ipso *Willielmo* exivit Dominus *Willielmus* secundus, & Dominus *Rogerus Russeyngus* Rector Ecclesiae de *Ingoldsthorp* & *Freyngz*. Et de ipso *Willielmo* secundo exivit *Willielmus* tertius & quatuor Filiae; videlicet, *Milicentia* prima Filia, quae desponsata fuit Domino *Reginaldo de Sancto Martino* fundatore Canonico de *Hempton*.
- 20 *Alicia* secunda Filia desponsata fuit Domino *Waltero de Wygenhall*. *Margareta* tertia Filia desponsata fuit Domino *Johanni de Uvedale*. *Beatrix* quarta Filia desponsata fuit *Gilberto de Tuckwell*. Et praedicta Domina *Etheldreda* post mortem praedicti Domini *Rogeri* Viri sui nunquam fuit desponsata, & ipsa vixit sola ad totam vitam suam sine Viro. Et obiit die Sancti *Cuthberti* tempore Regis *Johannis*.
- Modo dicendum est de Filiis & Filiabus *Galfredi* Filii *Ascuri* & praedictae *Etheldredae* Uxoris suae. Dominus *Alanus* fuit primus Filius praedictorum *Galfredi* & *Etheldredae*, & factus fuit Miles in Terra Sancta de Jerusalem tempore Regis *Ricardi*, de manu Comitis *Willielmi Arundelliae* tertii, eo tempore quo Dominus *Rogerus Russeyng* secundus fuit Miles, & cum eodem *Alano* fuit ibidem tunc temporis *Petrus* Frater praedicti *Alani*. Et idem Dominus *Alanus* in tota vita sua non habuit Uxorem nec Exitum, nisi unum Filium Bastardum, qui vocabatur *Robertus de Sharnburn*, & aliquando *Robertus* Filius *Alani de Sharnburn* communiter *Robertus de Hall*; & idem Dominus *Alanus* obiit tertio die Junii tempore Regis *Ricardi*. Dominus *Andreas* secundus Filius praedictorum *Galfredi* & *Etheldredae* factus fuit Miles in Terra Sancta de Jerusalem tempore Regis *Johannis* de manu *Willielmi* Comitis *Arundelliae* quarti. Et post reditum suum de Terra Sancta ipse desponsavit *Susannam* Filiam Domini *Benedicti de Angurvilla*, Domini de *Wesnewton*, *Suyton* & *Herlyngs*, & cum praedicta *Susanna* ipse habuit totam tertiam partem totius Haereditatis praedicti *Benedicti*; sed nullum Exitum habuerunt inter ipsos, propter quod ipse non tenuit praedictam tertiam partem nisi ad totam vitam praedictae *Susannae*; & post mortem ipsius *Susannae* idem Dominus *Andreas* desponsavit *Aliciam* quae fuit Uxor *Sylvestris de Risnges*, sed nullum Exitum habuerunt inter ipsos. Et praedicta Domina *Alicia* supervixit praedictum Dominum *Andream* Virum suum, & ibidem Dominus *Andreas* obiit die Sancti *Alphagi* Episcopi, Anno Dom. millesimo cxxix. & Regni Regis *Henrici* Filii Regis *Johannis* xxxiv. Et sepultus est apud *Sharnburn* in Capella coram Altari Beatae Mariae, prope parietem australem. *Petrus* tertius Filius praedictorum *Galfredi* & *Etheldredae* in redeundo de Terra Sancta de Jerusalem cum Domino *Alano* Fratre suo remansit retro praedictum *Alanum* in Francia cum quodam magno Domino illius patriae, qui non habuit Haereditatem nisi unam Filiam pulcherrimam, quam praedictus *Petrus* incipiebat amare, & illa consentiente eidem *Petro* & tempore praedicti amoris Pater Puellae praedictae obiit, & sic illa Puella remansit sola, & sine consilio nisi de Matre sua. Quo tempore dictus Dominus *Andreas de Sharnburn*, Frater praedicti *Petri*, antequam ipse factus fuit Miles, ivit in Terram

Secundus
Maritus
Etheldre-
dae.
Tertius
Maritus
Etheldre-
dae eorum
exitus.

Primus
Filius Gal-
fredi &
Etheldre-
dae Uxoris
ejus.

Secundus
Filius Gal-
fredi &
Etheldre-
dae.

Tertius Fi-
lius Gal-
fredi &
Etheldre-
dae.

23
* Hic vi-
detur ver-
bum emis-
si.

Terram Sanctam de Jerusalem, cum *Willielmo* Comite *Arundellia* quarto, & venit in illa parte Franciæ ubi prædictus *Petrus* remansit, & fecit ipsum ire secum in Terram Sanctam, & post reversionem prædicti *Andreae* idem *Petrus* remansit cum prædicta Puella & Matre sua. Quo tempore ipsa puella fuit prægnans per prædictum *Petrum*, & peperit unam Filiam, & in secundo anno postquam prædicta Puella fuit deliberata de Filia sua prædicta, idem *Petrus* audiuit dicere, quod *Susanna*, quæ fuit Uxor prædicti *Andreae* Fratris sui, fuit mortua sine liberis, propter quod ipse *Petrus* desideravit ire in Angliam ad Fratrem suum; & venit ad prædictam Puellam, & petiit licentiam ab ea, ut ipse posset redire in Angliam ad loquendum cum Fratre suo; & illa ei concedit licentiam malevole, & tristi corde, & dixit prædicto *Petro*, "Modo scio bene, quod quam citius venies ad Hospitium, habebis me in oblivione, & tibi capies aliam Uxorem." Et idem *Petrus* dixit quod non, & hoc affirmabat per juramentum, & fidem suam dando; & tunc illa dixit, "Tali conditione expectabo te per septem annos, ita quod non capiam Maritum nec ullum Virum donec prædicti septem anni erunt elapsi." Et tunc idem *Petrus* rediit in Angliam, & antequam ipse perventus fuit ad Hospitium, prædictus Dominus *Andreas* desponsavit *Aliciam*, quæ fuit Uxor *Sylvestri de Ryssinge*, qui receperunt prædictum *Petrum* lætantes, & cum magno gaudio: & post pusillum idem Dominus *Andreas* & *Alicia* Uxor ejus dixerunt eidem *Petro*, ut ipse desponsaret *Ceciliam* Filiam prædictorum *Sylvestri* & *Alicie*, & ipse nullo modo voluit consentire nec concedere; propter quod idem Dominus *Andreas* multum irascebatur versus prædictum *Petrum*, & dixit ei, si nollet ipsam *Ceciliam* desponsare, quod nunquam deberet esse Hæres suus post mortem suam. Et quia prædictus *Petrus* bene sciebat, quod prædictus Dominus *Andreas* & Domina *Alicia* nunquam habuerunt Hæredem de corporibus eorum, & ipse timuit quod idem Dominus *Andreas* in ira sua ipsum dishæredaret, ipse desponsavit prædictam *Ceciliam* tali conditione quod nunquam dishæredaretur; & prædictus *Andreas* hoc concedens & per juramentum affirmans, dedit ei & prædictæ *Ceciliæ* Uxori ejus Situm Manerii sui in *Snetesham*, & Terram suam in eadem Villa de *Snetesham*. Et prædictus *Petrus* genuit de prædicta *Cecilia* quinque Filios & unam Filiam, ut patet inferius. Et prædictus *Petrus* post mortem prædictæ *Ceciliæ* rediit in Franciam ad prædictam Puellam, quam ipse prius amabat, & quam citius ipsa Puella ipsum vidit, dixit ei, quod ipse fregisset conventionem quam ipse fecerat, quia septem anni fuerunt translati multo tempore elapso; & dixit, bene scio quod duxisti Uxorem; & ipse respondit quod non haberet Uxorem, sed non potuit denegare, quod ipse habuit Uxorem quæ mortua est, & dixit quod hoc fecit per cohortationem ratione Dishæredationis suæ; & tam cito quam ipsa hoc audivit, juravit quod nunquam caperet ipsum nec alium Virum, sed ipsa viveret sola sine Viro tota vita sua, & maritaret Filiam suam, quam ipse *Petrus* procreavit; & idem *Petrus* hoc audiente juravit similiter, quod ipse nunquam haberet Uxorem; sed solus viveret sine Muliere tota vita sua, & sic fecit; & postea idem *Petrus* ivit ad Comitem de Campania, & cum ipso fuit per longum tempus quousque ipse audivit de morte Domini *Andreae* Fratris sui. Quo audito, ipse rediit in Angliam, & venit apud *Sharnburn*, & ibi vixit tota vita sua cum Filiis suis, & obiit vivente prædicta Domina *Alicia*, videlicet in Vigilia Sancti *Andreae* Apostoli, Anno Dom. millesimo cclix. & Regni Regis *Henrici* Filii Regis *Johannis* xlv. & sepultus est in Capella Ecclesiæ de *Sharnburn* coram Altari Beate Mariæ juxta Dominum *Andream* Fratrem suum ex parte boreali.

Prima Filia prædictorum *Galfredi* & *Etheldredæ*, vocata *Matildis*, desponsata fuit Domino *Nicholao* Filio *Radulphi Dockyng*, item Dominus *Ricardus de Senges*, Dominus de *Berwick*, dedit plures Terras in *Dockyng*, & alibi in matrimonio cum prædicta *Matilde*, de quibus Dominus *Ricardus*, de quo Dominus *Nicholaus*, de quo *Ricardus*, qui vendidit totam hæreditatem Domino *Johanni Lovel* seniori, & aliis diversis hominibus de quo *Nicholaus of Hall*, pauper manens apud *Norwic*.

- 29 *Secunda* Filia praeceptorum *Galfredi & Etheldrede*, vocata . . . desponsata fuit Domino *Alano Filio Roberti de Ingoldsthorp*, de quibus Dominus *Thomas*, qui vocabatur *Rede Thomas*, de quo Dominus *Thomas* qui fuit Vicecomes *Norff.* de quo Dominus *Johannes*, qui fuit ad *Baneram* in guerra cum *Edwardo Rege* primo, de quo Dominus *Thomas*, de quo Dominus *Johannes*, de quo Dominus *Willielmus de Ingoldsthorp*.
- Tertia* Filia praeceptorum *Galfredi & Etheldrede*, vocata . . . desponsata fuit Domino *Nicholao de Tostes*, de quibus Dominus *Rogerus*, de quo *Thomas*, qui obiit vivente Patre suo, de quo *Rogerus* ultimus.
- 30 *Quarta* Filia praeceptorum *Galfredi & Etheldrede*, vocata *Isabella*, desponsata fuit . . . de quibus *Matildis*, quae desponsata fuit *Albino de Stamford* manenti in *Secheford*, de quibus *Johannes Aubyn de Hillyngton*, & *Ricardus Aubyn* Decanus de *Hecham*.
- 31 Modo dicendum est de Domina *Alicia*, quae fuit Uxor Domini *Andreae de Sharnburn*, de primo Viro suo, Domina *Alicia*, antequam ipsa desponsabatur Domino *Andreae de Sharnburn*, desponsata fuit *Sylvestro de Rysings*, cuidam homini diviti, multas habens Terras in *Rysings*, *West-Newton* & alibi, de quibus *Cecilia*, quae desponsata fuit *Petro de Sharnburn*, ut patet superius, & quaedam alia Filia quae desponsata fuit *Thoma Sorel de Oldlyne* seniori. Et unus Filius qui vocabatur *Willielmus Sylvestre*, de quo *Andreas Sylvestras* manens in *Congham*, de quo *Cecilia*, quae desponsata fuit *Willielmo Attechirch de Wulfurton* seniori, & *Alicia*, quae desponsata fuit *Ada Aniaxy de Sharnburn* seniori. Et praedicta Domina *Alicia* fieri fecit Cancellam de *Sharnburn*, & sepulta est in eadem Cancellam, & ipsa obiit tertio Idus Sept. An. Dom. millesimo cclx. & Regni Regis *Henrici Filii Johannis* xlv. Et *Cecilia*, quae fuit Uxor *Petri de Sharnburn*, obiit xi. Cal. Oct. Modo dicendum est de exitu *Petri de Sharnburn*, & *Ceciliae* Uxoris ejus. *Johannes* Filius praeceptorum *Petri & Ceciliae* primogenitus obiit sine haerede de se procreato vivente Patre suo, vid. vii Idus Nov. *Andreas* secundus Filius praeceptorum *Petri & Ceciliae*, vivente Patre suo, desponsavit *Emmam* Sororem Magistri *Godofredi de Tostys Rys*, quondam Rectoris de *Hunstanston*, de quibus exivit una Filia, ut patet inferius; & praedicta *Emma* obiit iii. Cal. Oct. & sepulta est in Coemeterio Ecclesiae de *Sharnburn*, ex parte australi Capellae prope parietem. Et post mortem praedictae *Emmae* idem *Andreas* desponsavit *Christianam* Filiam Domini *Alani le Gross de Wodenorton*, de quibus exivit unus Filius, & duae Filiae, ut patet inferius. Et praedictus *Andreas* obiit vii. Kal. Julii, An. Dom. millesimo cclxxxii. Regni Regis *Edwardi Filii Regis Henrici* decimo. Et sepultus in Capella Ecclesiae de *Sharnburn*, ad caput Domini *Andreae* sub pariete australi. Et praedicta *Christiana* post mortem praedicti *Andreae* desponsata fuit *Edmundo* Filio Domini *Johannis de Gylham de Derlyngham*, & vixit per longum tempus post mortem praedicti *Edmundi*; videlicet usque Festum Sancti Lucae Evangelistae, An. Dom. millesimo cccxxxvi. & Regni Regis *Edwardi* tertii post Conquestum decimo. *Walterus* tertius Filius praeceptorum *Petri & Ceciliae* fuit Armiger, cum Domino *Thoma Rostelyn* seniori, nobili homine & probro, tota vita ipsius Domini *Thome*, & cum ipso fuit ad bellum de *Lewes* & *Evesham* ex parte Regis *Henrici*, & *Edwardi* Filii sui; & postea idem *Walterus* fuit cum praedicto Domino *Thoma* in Terra Sancta de *Jerusalem*, in ultimis annis praedicti *Henrici* Regis in societate praedicti *Edwardi*. Et idem *Walterus* post reditum suum de Terra Sancta procreavit de *Juliana* Filia *Ada Rydout* senioris unum Filium, & tres Filias *Bastardas*, ut patet inferius; & postea per longum tempus ipse per cohortationem Ecclesiasticam desponsavit praedictam *Julianam*, contra voluntatem suam, quia ipse *Walterus* amabat Filiam praedicti Domini *Thome*, quae desponsata fuit Domino *Roberto Turtevell*, & post mortem ejusdem Domini *Roberti* ipsa debuit desponsari praedicto *Waltero*, sed perturbata fuit per praedictam *Julianam*, & post mortem ejusdem *Juliane* ipse vixit solus sine muliere usque in ultimis diebus vitae suae. Et quando *Edwardus* Rex primus post Conquestorem

tem cepit Crucem eundo in Terram Sanctam, ipse *Walterus* cepit Crucem, & signatus fuit in carne super humerum dextrum, sed non fecit peregrinationem dictam in vita sua, quia Rex non fecit. Et postea in ultimo anno vitae suae desponsavit *Margeriam* Filiam *Stephani de Geyton*, & ex ea procreavit unum Filium, ut patet inferius. Et eadem *Margeria* supervixit praedictum *Walterum* per longum tempus, & praedictus *Walterus* obiit pridie Cal. Octobris, Anno Dom. millesimo cccvii. & Regni Regis *Edwardi* Filii Regis *Edwardi* primo, & sepultus est extra Capellam de *Sharnburn*, ad caput orientale. Et praedicta *Margeria* obiit in pestilentia, videlicet die Sabbati Idus Junii An. Dom. millesimo cccxlix. & sepulta est ad ostium australe Ecclesiae de *Sharnburn*.

35

Philippus quartus Filius praedictorum *Petri* & *Ceciliae*, fuit Armiger cum Domino *Hugone Peche*, & cum ipso fuit ad bellum de *Lewes* & *Evesham* contra Regem & *Edwardum* Filium suum, & postea in Insula de *Ely* cum praedicto *Hugone*, propter quod ipse *Philippus* exulabatur ex Anglia, & obiit in Francia ad Villam quae dicitur *Sancta Maria de Pertico*, & ibi duxit Uxorem, & suscitavit prolem, & ibi fuit tota vita sua.

Quartus Filius Petri & Ceciliae.

Robertus quintus Filius praedictorum *Petri* & *Ceciliae*, fuit Armiger cum Domino *Johanne de la Hay*, & cum eo fuit ad bellum de *Lewes* & *Evesham* contra Regem & *Edwardum* Filium suum, & in Insula de *Ely* cum praedicto Domino *Johanne*, unde postea habuit pacem Regis, & venit ad hospitium ad *Andream* Fratrem suum, & ibi postea cito obiit sine liberis.

Quintus Filius Petri & Ceciliae.

36

Alicia Filia praedictorum *Petri* & *Ceciliae* desponsata fuit *Galfredo Curtemanche*, seniori Filio *Galfredi* Capellani, Filii *Briani de Snetesham*, & antequam desponsabatur decepta fuit, ita quod fuit praegnans de praedicto *Galfredo*, & habuit unum Filium Bastardum qui vocabatur *Galfredus Curtemanche* junior, de quo *Robertus*. Et post matrimonium illa habuit tres Filios & unam Filiam, videlicet, *Andreas* qui obiit sine Haeredibus, *Robertus*, *Johannes*, & *Johanna*, quae nupta fuit apud *Shulldham*. De *Roberto* secundo Filio in matrimonio exivit *Willielmus* Thesaurarius Comit. de *Warwick*. & sex Filiae, videlicet *Alicia*. *Alicia* desponsata fuit *Rogero de London* Civi *Coventriae*, *Beatrix*, & *Oliva* desponsata *Willielmo Bishop* de *Sharnburn*, & *Johanna*. Et praedictus *Petrus de Sharnburn* habuit plures Filios & Filias Bastardos, quorum nomina ignorantur nisi de tribus Filiabus, videlicet, *Etheldreda*, *Christiana*, & *Juliana*, quae desponsata fuit *Galfredo Rydout* seniori, de quo *Galfredus*, *Juliana*.

Filia Petri & Ceciliae.

37

Bastardi praedicti Petri.

38

Et praedictus *Petrus* post mortem *Ceciliae* Uxoris suae, & Domini *Andree* Fratris sui, factus fuit Miles in senectute sua de manu *Hugonis de Aubeny*, Pincernae ultimi Comit. de integro Comitatu *Arundelliae*.

Modo dicendum est de Exitu *Andree de Sharnburn* secundi.

Andreas de Sharnburn secundus de *Emma* prima Uxore sua habuit unam Filiam, quae vocabatur *Alicia*, quae habuit totam Haereditatem praedicti *Andree* Patris sui post mortem Fratris sui junioris, & praedicta *Alicia* primo desponsabatur *Jacobo Styward* de *Hulmo* juxta mare, & secundo *Ricardo de Gernestone* Burgenfi *Lenniae*, & non habuit exitum de praedictis Viris suis; sed obiit sine Haerede de corpore suo, videlicet x. Kal. Aug. An. Dom. millesimo cccix. & Regni Regis *Edv.* Filii Regis *Edv.* tertio incipiente. Et sepulta est apud *Lenniam* in Ecclesia Sanctae *Margaretae*, in uno Archo ex parte australi. Et idem *Andreas* secundus de *Christiana* secunda Uxore sua habuit unum Filium, & duas Filias, videlicet *Andreas* tertius, qui non fuit nisi de duobus annis vivente Patre suo, & non vixit post mortem Patris sui, nisi duobus annis & dimidio, & sic obiit sine Haerede de corpore suo procreato, iii. Non. Dec. An. Dom. millesimo cclxxxiv. & Regni Regis *Edwardi* Filii Regis *Henrici* xiii. incipiente, & sepultus fuit in Capella ad pedes Patris sui extra parietem. *Cecilia* Filia praedictorum *Andree* & *Christinae*, obiit sine Haerede in puerili aetate sua cito, post mortem Patris sui, vivente Fratre suo supra dicto. *Christiana* Filia praedictorum *Andree* & *Christinae*, obiit sine Haerede in puerili aetate sua, vivente Patre suo.

Prima Filia Andree secundi.

39

Filius Andree secundi. Secunda Filia Andree secundi.

40

Tertia Filia Andree secundi.

Et

Bastardus
Andreas
secundi.

Et praedictus *Andreas* secundus, antequam ipse habuit ullam Uxorem, genuit unum Filium Bastardum, vocatum *Johannem*, qui multum fuit probus & validus, & qui fuit Armiger cum Domino *Johanne Ingoldshorp* seniori, & obiit cito post mortem praedicti *Andreas* Patris sui sine Herede.

Modo dicendum est de Exitu *Walt. de Sharnburn*, tam ante matrimonium quam post matrimonium. *Walt. de Sharnburn* ante matrimonium contractum inter ipsum & *Julianam* primam Uxorem suam, genuit unum Filium Bastardum nomine *Petrum*, qui obiit ultra mare post mortem Patris sui, videlicet ad Nates Domini, An. Dom. millesimo cccxvii. & nunquam postea reversus est in patriam, nec habuit Uxorem, nec suscitavit prolem. Et similiter idem *Walterus* genuit de praedicta *Juliana* tres Filias Bastardas ante matrimonium praedictum, videl. *Rosa*, quae desponsata fuit *Adae Aymles de Hokam*, de quibus *Walterus* *Margareta*, quae nunquam habuit Virum, sed unum Filium Bastardum vocatum *Walterum*.

Agnes, quae similiter nunquam habuit Virum, sed unum Filium Bastardum vocatum *Petrum*, de quo *Hugo*. Et idem *Walterus de Sharnburn* de *Margeria* Uxore sua procreavit unum Filium vocatum *Andream* quartum, qui natus fuit vi. Kal. Nov. An. Dom. millesimo cccvii. videlicet per quinque dies ante obitum Patris sui, & anno aetatis ejus xii. desponsavit *Emmam* Filiam *Willielmi Goffelyn de Snetesham*, Capitalis Seneschalli Domini *Roberti de Monte Alto* Domini de Castello de *Rysing* & Seneschalli Cestriae, anno aetatis praedictae *Emmae* sexto, videl. die Dominica in Octab. Epiphaniae, An. Dom. millesimo cccxix. & postea ipse nutritus fuit cum praedicto Domino *Roberto*, & Domina *Emma* Uxore ejus. Et postquam ipse *Andreas* fuit plenae aetatis, genuit de praedicta *Emma* Uxore sua plures Filios & Filias, ut patet inferius, & eodem tempore ipse fuit Armiger cum Domino *Thoma de Brotherton* Comit. *Norff.* & cum pluribus aliis Dominis de *Norff.* in guerris *Scotiae*, *Gastoniae* & *Franciae*, quousque idem *Andreas* die Mercurii pridie Non. Junii, An. Dom. millesimo cccxvi. cepit peregrinationem suam versus Terram Sanctam de Jerusalem, & in societate praedicti *Andreas* fuit *Mauritius de Der Syngham*, & abierunt per ad Insulam de *Rodes*, cum Fratre *Roberto Saleyns* probi Milite Hospitalario & Marefcallo Hospitalis Sancti Johannis de Jerusalem in praedicta Insula de *Rodes*; & cum praedictus *Andreas* fuit in partibus illis, Rex Angliae devicit Francos apud *Cressy*, & cepit per obsidionem Villam de *Caleys*. Et tam cito quam ipse *Andreas* venit ad Insulam de *Cypro*, remansit cum Domino *Arnaldo* Vicecomite de *Caremayne*, qui ipsum *Andream* & *Armandum de Aspays* de Villa Sanctae *Mariae Podiensis*, fecit Milites apud Sanctum Sepulchrum in Ecclesia de Jerusalem, die Sabbati xvi. Kal. Martii, An. Dom. millesimo cccxlvi. in praesentia Vicecomitis *Nerbone*, & aliorum proborum & nobilium Militum de Francia, Catalonia, & Alemannia. Et ipse *Andreas* & *Mauritius* fuerunt apud Sanctam Catharinam, & in Aegypto, toto tempore pestilentiae in Anglia. Et in redeundo de Terra Sancta fuit apud Romam, Anno Jubileae quinquagesimo.

Modo dicendum est de Exitu Domini *Andreas de Sharnburn* quarti, & Dominae *Emmae* Uxoris suae. *Andreas* quintus Filius praedictorum *Andreas* & *Emmae* non vixit nisi per v dies. Item alius *Andreas* Filius secundus praedictorum *Andreas* & *Emmae* Uxoris suae, qui dictus fuit quintus *Andreas*, natus fuit die Lunae iv. Idus Augusti, An. Dom. millesimo cccxvii. & ipse fuit Armiger ad bellum de *Cressy*, & in obsidione de *Caleys*, cum Comit. de *Warwick*, tunc temporis Marefcallo Angliae, & ipse fuit ultra cum praedicto Comite usque pestilentiam in Anglia; & post praedictam pestilentiam in Anglia ipse fuit cum Duce *Lancastriae* Seneschallo Angliae, & cum ipso Duce fuit in Britannia ad obsidionem Civitatis *Rodenis*, ubi ipse percussus fuit de una petra minus grossa in capite suo super bacinetum; unde ipse languebat post ea per unum annum post obsidionem peractam quousque diem suum clausit extremam, & obiit die Sabbati Non. Julii, An. Dom. millesimo cccxviii. anno aetatis ejus xxxi. & sepultus est in Capella juxta *Andream* secundum.

Emma

Emma prima Filia prædictorum *Andreae & Emmae* Uxor ejus, nata fuit die Lunæ iv. Kal. Aug. An. Dom. millesimo cccxxviii. & desponsata fuit *Johanni de la Rokele de Wyndham*, die Lunæ ix. Kal. Dec. An. Dom. millesimo cccxl. qui fuit cum prædicto Domino *Andrea* Patre prædictæ *Emmae* ad obsidionem Civitatis *Redonis* in Britannia, ubi ipse *Johannes* obiit die Jovis vii. Kal. Feb. An. Dom. millesimo cccxvi. & sepultus est ibidem in Suburgo in Ecclesia Sancti Stephani Prothomartyris ad Altare Beate Mariæ Virginis juxta Crucem ex parte boreali. Et prædictus *Johannes* procreavit de prædicta *Emma* Uxore sua duos Filios & duas Filias, videlicet, *Thomas* natus die Sabbati in Festo Sancti *Barnabæ*, An. Dom. millesimo cccxi. *Johannes*, qui non vixit nisi per dimidium annum. *Agnes* nata

46

Willielmus tertius Filius prædictorum *Andreae & Emmae*, non vixit nisi per duos annos & dimidium. *Johannes* quartus Filius prædictorum *Andreae & Emmae*, non vixit nisi per dimidium annum. *Alicia* secunda Filia prædictorum *Andreae & Emmae*, nata fuit die Sabbati v. Kal. Nov. An. Dom. millesimo cccxxv. & obiit in pestilentia An. Dom. millesimo cccxlix. & sepulta est apud *Snetesham* in Capella ex parte boreali Ecclesiæ. *Robertus* quintus Filius prædictorum *Andreae & Emmae*, natus fuit die Veneris vi. Kal. Jan. An. Dom. millesimo cccxxvi. & obiit in eadem pestilentia, An. Dom. millesimo cccxlix. & sepultus est juxta prædictam *Aliciam* Sororem suam. Item alius *Willielmus* Filius sextus prædictorum *Andreae & Emmae*, natus fuit die Lunæ xi. Kal. Junii, An. Dom. millesimo cccxxix.

47

Margareta tertia Filia prædictorum *Andreae & Emmae*, nata fuit die Jovis vii. Id. Sept. An. Dom. millesimo cccxi. & obiit in pestilentia prædicta, & sepulta est apud *Snetesham* juxta prædictum *Robertum* Fratrem suum. *Agnes* quarta Filia prædictorum *Andreae & Emmae*, nata fuit die Dominica iii. Non. Maii, An. Dom. millesimo cccxlii. & obiit in pestilentia supradicta, & sepulta est juxta prædictam *Margaretam* Sororem suam.

48

Beata quinta Filia prædictorum *Andreae & Emmae*, non vixit nisi per unum annum & quarterium. *Katharina* sexta Filia prædictorum *Andreae & Emmae*, nata fuit die Mercurii viii. Kal. Junii, An. Dom. cccxlv.

49

Christiana septima Filia prædictorum *Andreae & Emmae*, nata fuit die Lunæ viii. Kal. Octob. An. Dom. millesimo cccxlvii.

Walterus septimus Filius prædictorum *Andreae & Emmae*, natus fuit die Veneris, iii. Id. Mar. An. Dom. millesimo cccxlv. finiente.

50

* " Modo dicendum est de Exitu *Willielmi* Filii prædictorum *Andreae & Emmae*, qui quidem *Willielmus* fuit Filius sextus, & Hæres prædicti *Andreae*, seniores Filii omnes interiire ut supra.

" *Willielmus* habuit Exitum de se legitime procreatum duas Filias, *Clartiam* & *Margeriam*. *Clartia* fuit desponsata *Johanni Toly*, & idem *Johannes Toly* & *Clartia* habuerunt Exitum de se legitime procreatum unam Filiam nomine *Margaretam*, quæ modo desponsata est *Ricardo Ellifwyke*:
" Et prædicta *Margeria*, altera Filiarum prædicti *Willielmi de Sharnburn*, desponsata fuit *Willielmo Champenys*, & habuerunt Exitus; modo iidem *Willielmus Champenys*, & *Margeria*, & Exitus eorum mortui sunt.

Item memorandum, quod *Ric. Ellifwyke* Armiger desponsavit *Margaretam Toly* Filiam & Hæredem *Johan. Toly* Armigeri de *Sharnburn*, An. Dom. millesimo cccxv. & anno Regni Regis Henrici quinti quartodecimo genuit Filium primogenitum nomine *Thomam Ellifwyke*, alio nomine *Thomam Sharnburn*; prædictus *Thomas Sharnburn* genuit *Johannem Sharnburn* primogenitum ex *Jomona* Uxore sua, &c. ut sequitur.

Item *Robertus* Filius secundus prædictorum *Ricardi & Margarete*, obiit sine Hærede. Item *Nicolaus* Filius tertius prædictorum *Ricardi & Margarete* fuit Rector Ecclesiæ de *Hedham*. Item *Margareta* primogenita Filia desponsata

1
2
3
4

* Hæc manu nupera inserta sunt.

fuit *Roberto Carwell* generoso, & ex ea genuit *Robertum Carwell*, & idem *Robertus Carwell* junior desponsavit *Eliaoram Pynkebek*, &c.

Item *Thomas Sharnburn* primus Filius prædictorum *Ricardi & Margarete* desponsavit *Jomonam Cherneys*, Servientem cum Domina *Margareta* Regina Angliæ, & ex ea genuit *Johannem Sharnburnum* primum Filium. Et prædictus *Thomas Sharnburn* fuit Hostiarius Camerae cum Domina *Margareta* Regina Angliæ, & prædicta *Jomona* fuit Domicell. . . . Camerae cum Domina *Margareta* Regina Angliæ, & obiit iv. Febr. An. Dom. millesimo cccclviii. & sepulta est in Ecclesia Apostolorum Petri & Pauli in *Sharnburn*, in australi parte sub fenestra in Capella ejusdem.

1 *Johannes* primus Filius prædictorum *Thome & Jomone*, natus fuit viii. die Julii, An. Dom. millesimo ccccliv.

2 *Edwardus* secundus Filius prædictorum *Thome & Jomone*, natus fuit viii. Kal. Junii, & obiit in juvenili ætate septendecim annorum, & sepultus Londoniæ in pestilentia.

3 *Thomas* tertius Filius prædictorum *Thome & Jomone*, natus fuit tertio Non. Augusti, & obiit in puerili ætate, & sepultus est in Ecclesia Apostolorum Petri & Pauli de *Sharnburn*.

4 * *Margareta* prima & ultima Filia prædictorum *Thome & Jomone*, nata fuit xi. Kal. Sept. & obiit in juvenili ætate, & sepulta est in Ecclesia Sanctæ *Margarete* Virginis & Martyris de *Lynn* Episcopi, An. Dom. millesimo cccclviii.

Antonius quartus Filius prædictorum *Thome & Jomone*, natus fuit pridie Kal. Feb. & obiit in magna pestilentia cum magno sudore, anno ætatis suæ vicesimo sexto, An. Dom. millesimo cccclxxxv. & primo Regni Regis *Henrici* septimi, & sepultus est Londoniæ.

1 *Johannes Sharnburn* primus Filius & Hæres prædictorum *Thome & Jomone* desponsavit *Annam* unam Hæredum & Filiam Domini *Johannis Curson* Militis, & *Johanna* Uxoris ejus de *Billingsford*, Non. Feb. An. Dom. millesimo cccclxxi. & anno xii. Regni Regis *Edwardi* IV. & ex ea genuit duos Filios & octo Filias, ut patet inferius.

Johanna prima Filia prædictorum *Johannis & Anne*, nata fuit iii. Kal. Apr. An. Dom. millesimo cccclxxiii. Anno xiv. Regni Regis *Edwardi* IV. Et habuit ante matrimonium *Robertum Sharnburn*, & postea nupta fuit *Gervasio Kelfull* de *Sharnburn*.

Henricus primus Filius prædictorum *Johannis & Anne*, natus fuit die Dominica in festo Sancti Georgii Martyris, An. Dom. millesimo cccclxxiv.

Margareta secunda Filia prædictorum *Johannis & Anne*, nata fuit ix. Kal. Aug. An. Dom. millesimo cccclxxv. Anno *Edwardi* IV. xvi. & obiit juvenis.

Thomas secundus Filius prædictorum *Johannis & Anne*, natus fuit Idibus Sept. An. Dom. millesimo cccclxxvi. Anno Regni Regis *Edwardi* IV. xvii.

Jomona tertia Filia prædictorum *Johannis & Anne*, nata fuit xvii. Kal. Jan. An. Dom. millesimo cccclxxvii. Anno Regni *Edwardi* IV. xviii. & sepulta est in *Sharnburn*.

Anna quarta Filia prædictorum *Johannis & Anne*, nata fuit Kal. Mar. An. Dom. millesimo cccclxxviii. Anno Regis *Edwardi* IV. xix. & fuit Monacha professa in Comit. *Norff.* & obiit ibidem.

Elizabetha quinta Filia prædictorum *Johannis & Anne*, nata fuit primo die Jan. An. Dom. millesimo cccclxxx. anno Regni *Edwardi* IV. xxi. Obiit in juventute, & sepulta est in *Sharnburn*.

Elizabetha sexta Filia prædictorum *Johannis & Anne*, nata fuit xvi. Kal. Dec. An. Dom. millesimo cccclxxxi. & Regni *Edwardi* IV. xxii. Et postea nupta fuit *Edmundo Poget* de *Honingham* in Comit. *Norff.* Generoso.

* Abhinc manu recentiore continuatur Codex MS.

Alicia septima Filia praedictorum *Johannis & Anna*, nata fuit III. Idus Nov. An. Dom. millesimo cccc. xxxiv. anno secundo Regis *Ricardi* tertii.

Agnes, octava Filia praedictorum *Johannis & Anna*, nata fuit duodecimo Kal. Feb. An. Dom. millesimo cccc. xxxvii. Anno Regis *Henrici* VII. tertio, & vixit quatuor diebus, & sepulta est in *Sharnburn*.

Modo dicendum est de *Henrico Sharnburn*, primo Filio & Haerede praedicti *Johannis Sharnburn & Annae* Uxoris suae: qui *Henricus* cepit in Uxorem *Elizabetham* Filiam Domini *Ricardi Lewis* Militis in Comit. *Essex*. & habuit ex ea Exitum *Thomam Sharnburn*, de quo postea, & duos alios Filios qui obierunt in infantia sua. Hic *Henricus* fuit Vir fortis & validus multumque versatus inter Aulicos tempore *Henrici* octavi, qui quidem Rex ipsum *Henr. Sharnburn* singulari quadam gratia & favore amplectens, primo fecit eum Militem, deinde le Provost Marshall, & postea Vice-Admirallum Angliae, misitque eum ad mare navi Viris & Armis fortiter munita, ut perpulsaret, & a finibus nostris perfugeret Piratos & Praedones, praecipue ex Gallica gente, qui eo tempore plurimum praedabantur in oris Angliae. In quo negotio viriliter quidem ipse *Henr.* se gerebat, quamvis sibi inutiliter successerit. Nam post multa a se praclare ac valide gesta tandem forte incidit in Admirallum Franciae, cum quo ferocissime & crudelissime habuit pugnam, in qua plurimi ex utraque parte occisi fuerunt, quorum praecipuus erat ipse Dominus *Henricus Sharnburn*, & sic finierunt dies ejus. Praedictus autem *Thomas Sharnburn*, Filius & Haeres dicti Domini *Henr. Sharnburn*, jam tunc aetate xviii. annorum, erat cum Patre suo in Navi in praedicta pugna, ubi ingens & insolitus Bombardarum sonitus aures suas ita obtudit, ut semper postea per totam vitam surdus remanserit. Serviebat tamen Illustrissimae Principi Dominae *Mariae* Filiae primogenitae Regis *Henrici* VIII. & ex ejus Familia elegit sibi Uxorem nomine *Elizabetham Atwell*, unam ex Ancillis dictae Principis, ex qua procreavit unum Filium & duas Filias, qui omnes in infantia aut puerili aetate mortui sunt. Ipsa autem *Elizabetha* Uxor dicti *Thomae Sharnburn*, in partu unius dictorum liberorum spiritum spiravit extremum xiii. die Feb. Anno Regis *Henrici* VIII. xxx. & sepulta est apud *Sharnburn*. Sed praedictus *Thomas* brevi tempore post accepit aliam Conjugem nomine *Blitham Brampton*, Filiam *Johannis Brampton* de *Brampton* in Comit. *Norff.* Armigeri, quae peperit sibi quinque Filios & duas Filias, quorum primus erat *Christophorus Sharnburn* qui natus fuit xii. die Oct. Anno Regni *Henr.* VIII. xxxiv. An. Dom. 1542. de quo postea.

Secundus erat *Antonius Sharnburn*, qui obiit eodem die quo natus fuit, viz. xxiv. Feb. Anno Regis *Henrici* VIII. xxxv. 1543.

Tertius erat *Dorothea Sharnburn*, quae nata fuit xx. die Nov. anno *Henrici* VIII. xxxvii. 1545. quae *Dorothea* primo nupta fuit *Johanni Plumstede* de *Plumstede* in Comit. *Norff.* Generoso, & post mortem dicti *Thomae* nupsit cuidam *Roberto Nichols*, & habuit Exitum ex utroque Marito.

Quartus erat *Henr. Sharnburn*, qui natus fuit iv. die Apr. Anno Regis *Edwardi* VI. primo, An. Dom. 1547.

Quintus erat *Thomas Sharnburn*, qui natus fuit xxiii. die Sept. *Edwardi* VI. secundo, qui obiit Infantulus in *Ingoldsthorp* apud Nutricem suam.

Sextus autem fuit *Anna Sharnburn*, quae nata erat iii. die Novemb. Anno *Edwardi* VI. tertio. Obiit in Infantia apud *Derfyngham* cum Nutrice sua.

Septimus erat *Antonius Sharnburn*, qui ortus fuit xx. die Mar. Anno Regni *Edwardi* VI. quinto An. Dom. 1551. qui obiit etiam tertio die Jan. An. Dom. 1604. anno aetatis suae lxi. & quia coelibatam degebat vitam, nullum ex se reliquit exitum.

Praedictus autem *Thomas Sharnburn* pater praedictorum liberorum in senectute sua saepe & vehementer gravabatur ex dolore Lapidis in Renibus & Vesica, qui morbus ita vires suas naturales debilitavit & mortem approximavit, ut xxii. die Mar. An. Dom. 1559. diem clausit extremum, & sepultus est in Capella Ecclesiae de *Sharnburn*; atque praedicta *Blitha* Uxor ejus supervixit

vixit eum, & habuit sibi pro termino vitae suae totum Manerium de *Sharnburn*, nupsitque cuidam *Lanceloto Smalperd* Generoso, cum quo degebat pluribus annis, & supervixit eum per decem annos, ita ut omnes dies ipsius *Blithe* possunt computari ad octoginta & sex vel septem annos. Obiit autem primo die Nov. An. Dom. 1602. & sepulta est in Capella Ecclesiae de *Sharnburn*, loco ubi *Thomas Sharnburn* Maritus suus sepultus fuit.

Modo dicendum est de *Christophoro Sharnburn*, primo Filio praedictorum *Thomae & Blithe*, qui postquam ad virilem aetatem pervenerat, duxit in Uxorem *Annam Veere*, ex progenie Comit. *Oxon.* & Consanguineam *Thomae Ducis Norff.* ex qua procreavit *Franciscum Sharnburn*, de quo postea. Et praedictus *Christophorus* obiit sexto die Julii, Anno Dom. 1576. anno aetatis suae tricesimo quarto, & sepultus in inferiori parte Capellae Ecclesiae de *Sharnburn* prope parietem.



EXTRAORDINARY

Inclytæ & Nobilissimæ Familiæ (quam LESTRANGE vocant) accurata Descriptio per H. Spelman. Mil.

Jobannes Extraneus primus habuit Nefse & Chesworthin ex dono Henr. II. =

Jobannes Extraneus II. superstes an. 6. Ric. I. in Com. = Salop. & 2. Joh. Regis. Tenuit Feodum 1. Militis de Wil. Fil. Alani, tempore Henr. II. in Norfolk, & duo Feoda Mil. de eodem Willielmo in Salop.

Robertus Extraneus tenuit dim. Feodi Militis de Willielmo Filio Alani in Com. Salop.

Hamo Extraneus.

Radulfus Extraneus de Ludham in Com. Norf. 2. Hen. III.

Jobannes = Lucia Filia Roberti Tregoze. Extraneus III.

Hamo Extraneus dedit Man. de Elsemere Rogero Monasterio. Fratri suo.

Alianora Filia = Robertus Extr. Will. de Albo Monasterio.

Havisa Soror Hamonis Extranei Domini de Delapole Uxor Griffini,

Rogerus Extraneus Miles = Matilda Filia... tenuit Man. de Kenedale de Bellocampo de Bedford.

Jobannes Extra- = Jobanna neus IV. Ds. de Filia Nefse & Kinton chola de Somery. in Com. Salop. Inq. 35 Hen. III. Ds. de Knokin.

Nota quod Ranulphus de Somery obiit fine vivente Patre, & habuit Filias.

Fulco Extraneus = Alianora filia & haeres Joban. Giffard Bar. de Brimsfeld & Matildis uxor. nica filia Baron. Clifford. Camd. 462.

Jobannes = Maria Extraneus Miles Inq. 49 Ed. III.

Roger. Extraneus tenuit = Castr. & Man. de Bedford, cum Man. de Hawias, Wiketon, & Shottesfeld per servitium tertie partis Baronie de Bedford.

Jobannes Extraneus V. Ds. de Knokin Inquis. 4. Edw. I.

Matildis Radulphus = haeres Vernoni.

Jobannes = Maria Extraneus Miles Inq. 49 Ed. III.

Ricardus = Ancoretta amita Talbot. Eliz. filia & haeres Johannis & fine prole. Mariz.

Jobannes Extraneus obiit haeres; uxor... Leisburn.

Radulphus Ver- = non de Matron in Com. Cestr.

Jobannes Lestrangle de = Ancorita Lestrangle Corham 23 Ed. III. ten. Man. de Dodington Co. Salop. Inq. 36 Ed. III.

Hamo Gilbertus Talbot Miles.

Jobannes Lestrangle conf. & haeres Johannis Strange.

Eubulo Le- = Alicia Ifolda = Jobannes Lestrangle obiit uxore D. & haer. D. Joh. Lestrangle de Knokin ten. Man. de Nefse & Kinton (Inq. 4. Ed. 2.) & Knokin in Com. Salop. 4 Ed. 2.

Hamundus Extra- = Margareta filia Radulphi Vernoni. Com. Norf. ex dono D. Johann. Lestrangle & Isoldæ fratris & sororis per chartam datam apud Knokin 3 Ed. 2.

Radulphus Vernoni.

Jobannes = filia & haeres Rob. Russelbroke.

Jobannes Lestrangle.

Rogerus Lestrangle = Ds. de Knokin & Ellesmere, 23 Ed. 3. filius Johannis VI. superstes 1328.

Hamo Ex- = Calbarina filia & haeres Jo- hannis D. Camois. dem die.

Nicolaus = Alianora filius & haeres A- belis Be- mont.

Jobannes Lestrangle.

Willielmus = Lucia Thomas Poy- = Dameta Rogerus = Alicia Inq. 9. Strange fil. & haer. Johanne.

Jobannes = Elena filia & haeres Ricardi de Hun- di Walkfare

Jobannes = filia & haeres Rob. Russelbroke.

Jobannes Lestrangle.

DATA

COAST GUARD

U.S. DEPARTMENT OF COMMERCE

VESSEL		DATE		TIME		LATITUDE		LONGITUDE		WIND		SEA		TEMP.		PRESS.		VISIBILITY		MOON		CLOUDS		REMARKS	

A
DIALOGUE

Concerning the
COIN of the KINGDOM:

Particularly,
What great Treasures were exhausted from
England by the usurp'd Supremacy of *Rome*.

A
CATALOGUE

OF THE
PLACES or *DWELLINGS*
OF THE
ARCHBISHOPS and *BISHOPS* of this Realm,

(Now or of former Times)

In which their several Owners have *Ordinary* Jurisdiction, as if
Parcel of their Diocess, tho' they be situate within the
Precinct of another Bishop's Diocess.

Found in the Library of

Sir *HENRY SPELMAN*,

And supposed to be written by him.

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Viandante. Selvaggio.

VLand. * . . . God amend them: But to return to the point
that led us into this Digression, *The excessive Price of Meat*.
I pray let us now leave foreign Countries, to look a little in-
to our own; and tell me what you think to be the Cause,
that the Prices of things do so far exceed the Proportion of
ancient Times. For I have seen in an old Evidence, that a
good Cow was in those Days sold for ten or twelve Shil-
lings; and at this day, I dare say such an one will cost thirty or forty Shil-
lings, and so likewise of other things.

Selv. How fore soever *Vitalliers, Inn-keepers, Taverns*, and such like,
gripe their Guests and Travellers; yet it is worth the examining whether the
Prices of things be in any notable excess greater than in ancient Times they
have been. For if we consider the Value of the Shilling then with the Value
of the Shilling now, we shall find that their Shilling was in Value three of ours.
For then, out of an Ounce of Silver they coin'd but five Groats, and after
(because Money was scarce in the Land) the King caused ten Groats to be made
of an Ounce. So that by this means there grew to be twice as much Money
in the Land as was afore, and yet never the more of Silver. After, in the
36. of *Henry VIII.* It was enhaunc'd to four Shillings the Ounce, and now
lastly unto five. So that now our five Shillings neither weigheth nor is more
worth in Silver, than their five Groats of ancient time. And then it follow-
eth by necessary consequence, that the Cow you speak of to be sold for ten
Shillings, may now be well worth thirty Shillings, and yet no difference at
all in their Prices. For admit, that the Custom used in the Time of the Con-
queror, and since also (as appeareth by *Doomsday-book*, &c.) had continu'd
until this Day, to receive and pay all Sums of Money according unto the
Weight and Touch, without respect of the Stamp or Coin; then was the Price
of your ten Shilling Cow six Ounces of Silver, and ours of thirty Shillings is
so likewise, and not one Penny more; *& sic deceteris*. But admit again, that
the Queen's Majesty should reduce her Coin to the former Rate of five Groats
to the Ounce, do you think that things would then be sold for so many Shil-
lings or Pounds as they now be? I warrant you, No. Then is it the un-
stable Value of our former Coins, that so much deceiveth a great number.

D d 2

For

* It was the Be-
ing.

For look into such things as have always retain'd an uniform Content, and you shall find little difference between our and the former Times, in giving one of those things for another. For at this day you may buy a Cow for as few Sheep as you could then, and a Horse for as few Cows. The Land that was then let (with us in *Norfolk*) for 8^d. or 10^d. the Acre, and now for eight Groats or three Shillings, was in those days also let for a Coumbe of Barley, and yet will not now be hired at so great a rate.

Viand. You have answer'd me beyond my expectation; but yet not fully satisfy'd me: For tho' I allow you these Proportions, yet there remaineth a great Diversity. For I have read, that in old time a Quarter of Wheat was sold at *London* for 2^s. a fat Ox for a Noble, a fat Sheep for 6^d. or 8^d. half a dozen of Pigeons for a Penny, a fat Goose for 2^d. a Pig for a Penny, and other things after that rate. And yet I grant, that a Man in letting or selling his Land for Corn, Cattel, and such like, or Ware for Ware, might in those days have as much as he can get now.

1 Kings,
ch. x.
v. 21.

2 Chron.
ch. xxiv.

Selv. The Time you speak of was about the 10th of *Edw. III.* and the like hath been at other Times also. And when the cause hereof is well consider'd, you shall find another right good Reason, why things should be sold for more Money now than they were then, and yet no whit at all dearer; and that is, the Plenty and Abundance of Plate and Money, which at this day is to be found in *England*, more than ever was in time past. For it is not our Commodities that be grown dearer, but *Gold* and *Silver* are become more common and of less estimation than they were wont. Infomuch, that whereas Plate was dainry in Great Mens Houses, it ruffleth now even at the meanest Tables; and Money is so little respected, as we will give great store thereof for a small Commodity. Like as in the Days of *Solomon*, Silver was so plentiful, as it was nothing esteem'd; no, it was holden so base a Metall, as *Solomon* would not make one Vessel thereof, no, not for his own Service, much less for the Temple of God: Yet afterward it became so scarce, as when *Joash* undertook to repair the Temple, he was driven to tax the People for it, that thereby he might have wherewith to pay the Workmen, and whereon to make the holy Vessels. So King *Edw. III.* having with effusion of much Treasure ended his *Scottish* Wars, and determin'd to begin afresh with *France*, practis'd such Means to recover Money to supply these Charges, as he got so much into his hands, that Writers report it was very scant and hard to be come by through the whole Realm; and hereupon proceeded the Cheapness that you speak of: Men were constrained to give a great deal of Ware for a little Money, because they could have no other Chaffer for their Commodities. But from these particular Contingents you must not raise general Consequents: for in that sort, I can shew unto you, that things were much dearer before the time you speak of, than they are now. As in 22. *Edw. I.* a Quarter of Wheat was sold for 30^s. So in the time of *Richard I.* all things were so exceeding dear for three or four Years together, that a Quarter of Wheat was then sold for 18^s. 8^d. a strange Price, if you consider the Allay of Money then currant; and this was almost 400 Years ago. Also in the Year 1289. (*Edw. I.* 17.) Wheat was ordinarily sold for 2^s. the Bushel, and continued at that Price almost forty Years together; rising oftentimes to 10^s. the Bushel, and sometimes to a Mark and above, as in the Year 1317. and in these Days other things bare Price accordingly. I could put you many Examples more, if these sufficed not; but sure I am of mind, that all Occurrents rightly weigh'd, things be little or nothing dearer than in ancient time.

Viand. You say fore unto me, if you make it apparent that Money were so plentiful as you affirm it. For my own part, I am sure, I have little enough.

Selv. And I too; but that is not the matter: For what store of Sap loever the Tree hath, yet many Spriggs and Leaves do wither away for want thereof.

The

The great ones have it, I warrant you; and that *ultra modum*. But to our matter. Two things are the Causes thereof: It is brought in more plentifully than in ancient Times; and carried out more sparingly. Brought in more plentifully, in respect of greater Traffick that we have had within these latter Years, even to all Places in the World; by which we have utter'd our own Commodities at the dearest, and fetcht the foreign from the original Places, which with far greater charge we were wont to buy at second hand.

Viand. Yea, marry, Sir: the less we have of some of that Trafficking, the better (I think) for *England*. For by this means, they carry from us our good Corn, Woolf, Cloth, Copper, Lead, Tinn, and such like rich Commodities, and the Sustenance of our Country; and return us for them Excess of Lawn, Camrick, Plums, Spice, Suckets, and other lascivious Trumpery, whereby effeminate Delicacy is crept in amongst us, and our warlike Reputation put in peril to be lost. This kind of Traffick may well be term'd *Glauco & Diomedis permutatio*. Doth the Wealth and Money you speak of come into *England* by this means?

Selv. Nothing less. There be other good Merchandise enough; as Pitch, Tar, Iron, Copper, Deal, Madder, Woath, Cocheneal, and such like; and yet those you speak of are in some measure necessary. But by our Traffick into foreign Countries, tho' we many times bring home light and frivolous Toys, yet they are often accompanied with *Gold* and *Silver*, both in Coin and Bullion. Besides, you know that the Treasure (according to my capacity) is infinite, which in these later Years hath been unshipp'd in *England*.

Viand. True; but goeth it not out as merrily (think you) as it cometh in? or not so fast, as it did in Times past?

Selv. That is the other Point to be consider'd of; and, I know by certain Speeches utter'd in the last Parliament, that her Majesty's Occasions to disperse it are exceeding great and urgent; yet a principal Part thereof runneth (as in a Circle) up and down the Land. And tho' she sendeth much beyond the Seas, for Entertainment of her Bands and Garrisons, and executing of her other Royal Purposes; yet doth she therein but as all her Renown'd Progenitors have done before her: For neither *England*, nor any other Realm in *Europe*, have ever wanted this kind of Issue. But the Reasons that make me think, that our Wealth should continue with us better now than in Times past it hath done, are, for that the *Roman* Coffers are not now glutted (as they have been) with *English* Treasure continually flowing into them. For it is a World to consider the huge Stocks of Money, that those cozening Prelates have heretofore extorted out of her Majesty's Kingdoms by their Antichristian and usurp'd Supremacy. As, by Pope *Innocent* constraining King *John* to redeem his Crown at his hands, and to take it for ever in Farm for the yearly Rent of 1000 Marks, to be paid to him and his Successors: By causing *Henry III.* to maintain his Wars against *Frederick* the Emperor and *Conrade* King of *Sicily*: By drawing from our Kings many Contributions and Benevolences: By laying upon their Subjects, as well temporal as spiritual, Tenths and Taxes, in most ravenous manner; and that very often. (So that in the time of *Henry III.* the Realm was by such an extream Tax mightily impoverished, as our Chronicles witness; as also at many other times since and before. For when the Pope was disposed to use Money, he would tax our People as if they had been his natural Subjects; by many *Congratulations* of the Clergy, as 11000 Marks at one Pull to Pope *Innocent IV.* by private *Remembrances* from single Bishops, as 9500 Marks from the Archbishop of *York* to Pope *Clement V.* in *An.* 34. or 35. *Edw. I.* and from divers of them jointly 6000 Marks to the foresaid *Innocent*.) By their rich Revenue of the *First-Fruits* and *Tenths*, as well of the Archbishopricks, as of all other spiritual Livings; now reannex'd unto the Crown by the Parliament, in the first

of

of her Majesty: By Installing, Consecrating, and Confirming Bishops: By dealing Benefices: By Appellations to the Church of Rome: By giving definitive Sentences: By distributing heavenly Graces: By granting Pardons and Faculties: By Dispensations of Marriages, Oaths, and such like: By selling their blessed Trumpery, and many such other things that I cannot reckon, whereof that Merchandizing Prelate knoweth full well how to make a Commodity; according to the Saying of the Mantuan

*Venalia nobis
Templa, Sacerdotes, Altaria sacra, Corona,
Ignis, Thura, Precos, Caelum est venale, Deusque.*

All this consider'd, and that the Sums of Money by them receiv'd before the Time of Henry VIII. were (according to the Value of our Coin at this day) three times as much, as before is shewed; you must needs confess that the Fat of the Land larded the Roman Dishes, whilst our selves rear'd upon the lean Bones. Besides, it must not be forgotten, that one Tenth granted to the Pope, impoverish'd the Realm more than ten unto the King. For what the King had was at length return'd again among the Subjects, little thereof going out of the Land: (much like the Life-blood, which tho' it shifteth in divers Parts, yet still continueth it self within the Body.) But whatsoever came into St. Peter's Pouch, was lock'd up with the infernal Key; *Et ab infernis nulla est Redemptio.* England might lick her Lips after that; it came no more among her People. Thus we were made the Bees of Holy Church, suffer'd to work and store our Hives as well as we could; but when they waxed any thing weighty, his Legates were sent to drive them and fetch away the Honey. Yea, if his Holiness were sharp set indeed, he would not stick to use a trick of Husbandry, rather burn the Bees than want the Honey. I may tell you too, his Legates and Nuncios were ever trim Fellows at licking of the Hive; as in our Chronicles you may read abundantly.

Vind. You have made the matter so plain, that I must needs grant, that our Treasure goeth not out of the Land in any comparable measure, as it did in times past. For, as you say, tho' these Actions of the Low Countries, France, Portugal, and other Places, hath somewhat suck'd us; yet I consider, that we have ever had such a vent, even in the several Days of our Kings, as in the time of Queen Mary, King Edw. VI. King Henry VIII.

Selv. Their Occasions indeed are best known unto us; because many Men living were Witnesses thereof. But I will recite unto you cursorily somewhat of the rest, that you may the better be satisfy'd that it is no novelty in England. And for to begin with Henry II. what store of Treasure (think you) was by him and his wasteful Sons (whereof two, namely Henry and John, were Kings as well as himself) daily carry'd into France, Flanders, Saxony, Sicily, Castile, the Holy Land, and other Places: sometime about their Wars and turbulent Affairs; other some time for Royal Expence about meeting, feasting, and entertaining the French King, the Pope, foreign Princes, and such other Occasions; the particular whereof were too long to recite. But we may well think, that England must needs sweat for it in those days, to feed the riotous hands of three several Kings, spending so much of their time on the other side the Seas, as they did. The like was done by Richard I. about his Ransom and Business with the Emperor and Leopold Duke of Austria, about his Wars in France and the Holy Land, where it is said, that by estimation he spent more in one Month, than any of his Predecessors ever did in a whole Year.

*Chron.
fol. 126.*

By Henry III. about the affected Kingdom of Sicily, and his Wars in Gascoigne, and other Parts of France, and in Bounty to Strangers. He at one time sent into France, at the direction of the Poitevins, 30 Barrels of Sterling

ling Coin for payment of foreign Souldiers; and at another time, these his wasteful Expences being cast up, the Sum amounted to 950000 Marks, which after the rate of our Allay, encreaseth to

By *Edw. I.* about his Actions of *Guienne, Gascoigne, France, Flanders,* and the Conquest of *Scotland*, and the striking of a League with *Adolph* the Emperor, *Guy* Earl of *Flanders*, *John* Duke of *Brabant*, *Henry* Earl of *Bar*, *Albert* Duke of *Austria*, and others, against the *French* King, and Earl *Jo.* of *Hainault* his Partaker.

By *Edw. III.* about his Victories and Designs in *France*, and elsewhere; which exhausted so much Treasure, as little or none almost remain'd in the Land, as before is shewed.

By *Henry IV.* about the Stirs of *Britain*, and in supportation of the confederate Faction of *Orleans*.

By *Henry V.* about his Royal Conquest of *France*.

By *Edw. IV.* in aiding the Duke of *Burgundy*, and in revenging himself upon the King of *France*.

By *Henry VII.* about his Wars in *France*, in annoying the *Flemings*, in assisting the Duke of *Savoy*, and *Maximilian* King of the *Romans*.

I need not speak of *Henry VIII.* whose foreign Expences as they were exceeding great, so they are sufficiently known to most Men. Neither have I more than lightly run over the rest; who, besides these that I have spoken of, had many other foreign Charges of great burden and much importance, and yet not so much as once touch'd by me; as Marriage of their Children with foreign Princes, Treaties of Peace between their Neighbours, Congratulations, Embassages, and such like.

Viand. But what moves you to let slip King *John*, *Edward II.* *Richard II.* *Henry VI.* and *Richard III.*

Selv. Not for that they were free from foreign Expences, which is not possible; for it oppressed them all; but for that most of them omitted such necessary Charge, as in policy they ought to have undergone, both for strengthening themselves with Friends; and weakning their suspected Enemies, such as, when occasion serv'd, were like to do them damage. For if *Edw. III.* had not by this means fortify'd himself with the Alliance and Friendship of the noble Knight Sir *John of Haynault*, the Dukes of *Brabant* and *Gelderland*, the Archbishop of *Colein*, the Marquess *Guleck*, Sir *Arnold de Baquetien*, the Lord *Walkenburgh*, and others; and also greatly impair'd the Power of the *French* King, by winning the *Flemings* from the Obedience of the Earl of *Flanders* (his assured Friend) and by procuring the stay of much of the Aid by him expected out of the *Empire*, *Scotland*, and other Places; he had not only fail'd in his *French* Attempts, but also put his Kingdom of *England* in hazard by the *Scots*, who were sure of all the help and backing, that *France* could any way afford them. So, had it not been for the Aid and Friendship of the *French* King, the Earls of *Bullogne*, *St. Paul*, the *Gascoines*, and other Foreigners, *Henry III.* had been bereav'd of his Kingdom by his own Subjects; which notwithstanding he held with great difficulty. So the rest likewise. But on the contrary part, the others, whom you nam'd, neglecting this right precious (tho' costly) Ground-work; not only wanted it when need required; but with the Ruin of their People, State, and Kingdom, lost their Crown and dearest Lives by the infernal Hands of cursed Murtherers; their rebellious Subjects getting once the better hand.

Viand. But *Edw. II.* used means also to have procured the Amity and Assistance of divers Foreigners, as the Duke of *Britain*, the Lord *Biskey*, the Lady *Biskey* (Governess of the King of *Castile* and *Leon*), *James* King of *Aragon*, and others. And *Rich. II.* fought the like of the hands of the *French* King; and so the rest likewise of others.

Selv.

Selv. True: Not examining the Dependencies of time present, they imagined in their Prosperity that things to come would ever have good Success; and therefore deferr'd still the doing of it, till extream Necessity compell'd them to it; and then their Estates being utterly desperate and ruinated, no Man willingly would lend them Aid or Ear; knowing, that when the Fury of the Disease hath once possess'd the vital Places, it is then too late to apply Physick. This Reason made the Princes you speak of to refuse King Edward II. And as for Richard II. when the French King saw how he was entangled and overladen with dangerous Rebellions and Divisions of his Nobles and Commons at home; War in Scotland, Flanders, Spain, Portugal, Ireland; sending Forces against the Infidels; relieving the expelled King of Armenia; and many other such turbulent Affairs: he then thought (and truly) that there was more to be gotten by being his Enemy than his Friend; and taking advantage of that Opportunity, defy'd him also and warr'd upon him. So that King Richard, wholly void of Aid and Hope, fell into the hands of his proud Barons, and lost both Crown and Life. In like miserable sort stood the case with Henry VI. For being once descended to the lowest exigent, who almost durst relieve him, or any of the rest, for fear (as our Proverb saith) of pulling an old House upon his own head? Whereas, if in their flourishing Estate they had employ'd their Treasure to encounter future Perils being yet afar off, they had (no doubt) securely held their Crowns, and perhaps without much business illuded all the Practices of their Enemies drawing nearer. Had Richard II. at the time when being in France he bestow'd the Value of 10000^l. in Gifts upon the fickle French King, staid there and employ'd the other 300000 and odd Marks (by him also wasted at that Bravery) ingaining the Amity of his neighbour Princes, to serve his turn when need should be; it is not unlikely but afterwards it might have sav'd all the rest. For it is a good Rule that is taught us in the Art of Fencing, to break the Blow or Thrust that might endanger us as far from our Bodies as we can. For, as I said before, when things be drawn to the last Period, the Time of Help is past, according to the Saying of Hecuba to her betray'd Husband, being about to arm himself.

— *Quæ mens tam dira, miserrime Coniux,
Impulit his cingi telis? aut quo ruis? (inquit)
Non tali auxilio, nec defensoribus istis
Tempus eget; non si ipse meus nunc afforet Hector.*

Most Royal therefore are the Providence and Expences of her Excellent Majesty, who (as it were with Lynceus Eyes) looking into the lowest Secrets of the Practices of her Enemies, hath not only for these 36 Years utterly cancell'd and made them frustrate; but foreseeing also what mighty Consequences might depend on mean Beginnings, omitteth no Diligence to defeat them whilst they are yet in the shell; or so to environ the Mark whereat they are levell'd, as being hatch'd, they shall be able to perform nothing. Knowing it to be far greater Wisdom to preserve the Body (whilst it is sound) from all Infirmities, than by admitting a dangerous Disease, to gain the Credit of an excellent Cure. And tho' Money be the Blood wherein the Life of all Commonwealths, as in a Nest, is cherish'd; yet Nature teacheth, that to preserve Health and cure an impostumate Disease, we ought to let Blood out, and that sometimes in great abundance. And, as *Themistocles* said, *Pecunia nervus Belli*, (Money is also the Sinews of War;) and look how necessary Peace is in a Commonwealth, so necessary is War to beget Peace; for Peace is *Belli Filia* (the Daughter of War.) But to return to our matter, lest we fare like the unskilful Hounds, that undertake a fresh Hare, when they have hunted the first till she be almost spent.

It

It appeareth by that that hath been said; that a main Port by which our Treasure hath been vented from us heretofore, is now shut (God be thank'd) and that instead thereof no new is opened. So that thereby our Store must needs remain better by us than it hath; and we by consequence must be the richer. It is also to be added, that whereas in former Times much of the Treasure that came into the Land was buried up in superstitious Employments, as about *Images, Shrines, Tabernacles, Copes, Vestments, Altar-clothes, Crucifixes, Candlesticks, &c.* by means whereof the Commonwealth became no whit richer, than if that Part so employed had never come within the Land: Now we do not only retain that idolatrous Charge still in our Purles, (which makes us much the wealthier) but the rest also (which for many hundred Years together was so employ'd) is now to our greater enrichment return'd again amongst us by Dissolution of these Popish Ceremonies.

Vind. You may also reckon the Money given to Maintenance of *Priests, Monks, Lights, Obits, Anniversaries*, and all the Plate and Treasure of the Clergy at that time, to be of the same sort.

Solv. That did *Edward* the First well consider: and therefore to the end that he might dig it out of the Grave, and bring it abroad again among the People that had need thereof; he suffer'd the matter to be so handled by one of his Treasurers, that certain Captains appointed to work the feat, placing their Soldiers in every Quarter through the Realm, made search at one time (in *July* at three of the Clock in the Afternoon) for all such Money, were it hid or laid up in hallowed Places; and taking the same away, brought it unto the King; who dissembling the matter (as he that stood in need) excused the Act done by his Treasurer, and thought it no Offence, but rather a good Work. Besides all this, there is yet another means whereby the Treasure of our Land must needs be much encreased; and that is by divers good Laws and Statutes; made both for causing it to be brought into the Realm, and also for containing it within the Limits of the same, when it is come. And that is by the Stat. 14. *Edw. III.* whereby it was enacted, that every Man (Denizen or Stranger) that should transport any Wooll out of the Land, should find sufficient Sureties to bring again unto the King's Exchange, for every Sack of Woll transported, Plates of Silver to the value of two Marks.

And by the Statute of 3. *Hen. V.* (confirmed and quickned by 32. *Hen. VI.*) which provided, that every Merchant-Stranger, buying Wooll in *England*, not coming to the Staple ~~to be sold, shall bring~~ to the Master of the Mint of the Tower of *London*, of every Sack, one Ounce of Bullion of Gold: and in the same manner; of three Sacks of *Tin*, one Ounce of Bullion of Gold, or the Value in Bullion of Silver, upon pain of forfeiture of the same Wools and Tin, or the Value thereof, to the King.

It is provided also, for containing of Money within the Land, that all Merchant-strangers shall employ all the Money receiv'd by them within this Realm, upon the Merchandise and Commodities of this Realm, (deducting their reasonable Expences;) and that they shall give sufficient Surety for doing hereof, and the Trespasser to forfeit and be punished grievously, as in the Statutes is contain'd; 3. *Hen. VII.* affirming and enlarging, 14. *Edw. IV.* and many other of like effect. And by 4. *Hen. VII.* that no Man dwelling in *England*, shall pay or deliver wittingly to any Merchant or other born out of the King's Obedience, for any Merchandise or Wares, or in any other wise, any Gold coined, Plate, Vessels, Bullion, Jewels of Gold or Silver, upon pain of forfeiture thereof. And by 14. *Edw. IV.* (affirm'd by 4. *Hen. VII.* and for a time continued by 1. and 3. *Henry VIII.* with a Mitigation of the bloody Penalty) all Men, except such as had the King's Licence, or were dispensed with by those Statutes, were utterly inhibited from carrying out of the Realm any manner of Coin, Plate, Vessel, massy Bullion, Jewels of Gold

or Silver. Which Law, and many other of the like effect, tho' they continue not now in force, yet the Fruit thereof remaineth to us still, as Children enrich'd by their Fathers Sparings.

Besides, it is not altogether to be passed in silence, that our Treasure is somewhat increased by the Gold and Silver try'd out of our own Mines here in *England*. Which tho' it be little or nothing, in respect that in this latter Age we have wimbled even into the Bowels of *Plutus's* Treasury (the *Western Indies*) yet is it so much, as our *Historiographers*, both new and ancient, have thought it worth the noting; and all our Kings from time to time have made especial account of; as well appeareth by a Multitude of Leases thereof granted by them to many noble Personages, extant in the Checquer Records: and also by the Process and Argument of the Earl of *Northumberland's* Case concerning a Copper-mine, 10. *Eliz.* which in *Plowden's* Commentaries is at large reported. But be it little or great, *Many littles* (as our Adage saith) *make a great*, and continual Accession amasseth at length to a mighty thing; as is well seen in the Hill *Tesaccchio* in *Rome*, which standing in a Plain, and being about half a Mile in compass, and exceeding in height any Tower in the Town-wall, is said to have been made of the Shards of the Pots wherein the Tribute-money was brought to *Rome*; or as pleaseth rather the more Learned sort, of broken Pots thrown out of the VII. College of Potters, built by *Numa Pompilius*. But be it the one or other, the semblance serves my turn, and there's an end.



THE

THE
PLACES or DWELLINGS
OF THE
ARCHBISHOPS and BISHOPS of this Realm,

(Now or of former Times:)

In which Houses their several Owners have *Ordinary* Jurisdiction, as if Parcel of their Diocess, as is recited in the Stat. of 33. *Hen. VIII.* Cap. 31. altho' they be situate within the Precinct of another Bishop's Diocess.

1. **T**HE Lords Archbishops of CANTERBURY of long time enjoyed and do enjoy *Lambeth-house*, as appeareth in *Historia Cantuariensium Episcoporum*, let forth (as is thought) by Dr. *Ackworth* in the Lord Archbishop *Parker's* time. The which House was never severed from the Lord Archbishop's See of *Canterbury* since the Annexion thereof to that See.

2. The House at *Lambeth-marsh*, commonly call'd *Carlile-house*, was the Bishop of *ROCHESTER's* Palace until about 26. *Hen. VIII.* as appeareth in the foresaid *Historia Cantuariensis*, and also in the Act of Parliament of 22. *Hen. VIII.* cap. 9. made against Poysoning; whereby it doth appear that the House of *John* Bishop of *Rochester* was at *Lambeth-marsh*. But afterwards, about *An. 27. Hen. VIII.* or after, the same (being some ways the King's) was convey'd to *Robert Aldridge* Bishop of *CARLILE* and his Successors, in exchange for his Houses near *Ivie-bridge*, (now the Earl of *Worcester* and *Salisbury's*) and other Houses there toward the Street, and of a yearly Rent of 16^l. or thereabouts, out of those Houses given to the Bishop of *Carlile* and his Successors, for those Houses formerly call'd *Carlile-place*. But the said Bishop *Aldridge* leas'd the House of *Lambeth-marsh* for some small and not valuable Rent, for divers Years yet enduring.

3. The Bishop of *ROCHESTER* had given for his Palace to dwell in, certain Houses lately call'd *Rochester-house* near adjoining to *Winchester-place*, and sometime (as it is reported) parcel of the Possessions of the Priory of *St. Swithins* in *Winchester*; but that Place is lately divided into several little Dwellings.

4. *WINCHESTER-Place*, with the Liberty of the Prison of the *Clynke* and *Bancke*, belonged and doth belong to the Bishop of *Winchester*; and the House was in *Edw. the Sixth's* time, conveyed to the Marquess of *Northampton*, who builded the Gallery there: but in *Queen Mary's* time, the same was restored to that See, where it so continueth.

5. The Lord Archbishop of *YORK's* House was the *White-hall*, much enlarg'd and re-edify'd by the Cardinal *Wolsey* then Archbishop of *York*; as by the Arms remaining in Wood, Stone, and Glass, in sundry Places of that House, may appear. And after the said Cardinal's Conviction of *Premunire* and *Death*, the same was made Parcel of the King's Palace at *Westminster*, by Purchase from the Archbishop of *York*, as appeareth by the Stat. of 28. *Hen. VIII.* cap. 12. But afterwards, until *Ann. 2. or 3. of Queen Mary*, the

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Archbishop of *Tork* had no other Dwelling-place near *London*, in right of his See, or by reason of his Archbishoprick, but the House at *Battersey*; and then Queen *Mary* gave to Archbishop *Heath* and his Successors, the late Duke of *Suffolk's* House, called *Suffolk-place* in *Southwark*, which the Archbishop of *Tork* (by confirmation of the Dean and Chapter there) shortly after sold away to others, and purchased to his See *Tork-place*, where the Lord Chancellor remaineth, together with the Houses adjoining to the Street. Which House was sometime the Bishop of *Norwich's* Place; and the same, among all of the greatest part of the Possessions of the See of *Norwich*, about *An. 27. Hen. VIII.* were convey'd to the King by a private Act of Parliament, in recompence of the Union of the Monastery of *St. Bennet's*, and the Possessions thereof to that Bishoprick; being of far better Value than the ancient Lands of the Bishoprick of *Norwich* assur'd to the King, as is recited in the Statute of *32. Hen. VIII. cap. 47.* Whereby the Bishop of *Norwich* is made Collector of the Tenths of his Diocess, as other Bishops were; being formerly freed thereof by the said private Statute of *27. Hen. VIII.* Which said now *Tork-place*, by *Hen. VIII.* was convey'd in Fee to *Charles Brandon* Duke of *Suffolk*; and after the Death of the said Duke's Sons, the Coheirs of the Duke's Sons sold the same to the said Archbishop *Heath* and his Successors.

Norwich. 6. But the Bishop of *NORWICH* was limited by the said private Act of *27. Henry VIII.* to enjoy perpetually in Succession, a Prebend in the Free-Chappel of *St. Stephen's* at *Westminster*, after dissolved by the Statute of Dissolution of Colleges and Free-Chappels *1. Ed. VI.* and the House thereto belonging in *Chanon-row*, whereof then was Incumbent one Knight; but the House is said to be leas'd for some small Rent by the Bishop of *Norwich* to Sir *John Thinn* Knight in *Edw.* the Sixth's time, for many Years enduring. And that the House now call'd *Tork-place*, was belonging to the Bishop of *Norwich*, is proved by a Case *21. Edw. 4. fol. 73.* in a Presentment against the Bishop of *Norwich* in the King's Bench, for annoyance of a Way inter *Hospitium Episcopi Norwicensis & Dunelmensis, in Parochia Sancti Martini in Campis.*

Durham. 7. *DURHAM-HOUSE* (as appeareth in that Case) was the Bishop of *Durham's* House; and Bishop *Toussat* about the *26th* of *Hen. VIII.* convey'd the same to the King in Fee; and King *Henry VIII.* in recompence thereof, granted to the See of *Durham* *Coldharbottle*, and certain other Houses in *London*. And after, *Edw. VI.* about *An. 2.* granted *Durham-house* to the Lady *Elizabeth* his Sister for Life, or until she be otherwise advanced. After, the Bishoprick of *Durham*, by a private Statute not printed, of *7. Edw. VI.* was dissolved, and all the Possessions thereof given to King *Edw. VI.* who shortly after convey'd in Fee the said Bishop's late House at *Coldharbottle*, and other Houses in *London*, to *Francis* Earl of *Shrewsbury* and his Heirs. And after the *2. Marie*, cap. 3. the Stat. of *7. Edw. VI.* for dissolving that Bishoprick is repeal'd; but the Mansion-house of *Coldharbottle* and other Tenements in *London*, so granted to the said Earl, be confirm'd. And the Bishop, by that Act, prayeth a Recompence from the Queen at his charge. Whereupon Queen *Mary*, about *Ann. 5. or 6.* of her Reign, granteth to the said Bishop of *Durham* her Reversion of *Durham-place* in succession; which coming into possession by the Death of Queen *Elizabeth*, the late Bishop of *Durham* (now Lord Archbishop of *Tork*) enter'd into and enjoy'd the same in the Right of his See, by opinion of the Chief Justices of the Land, referr'd by the King, being opposed by Sir *Walter Rawleigh*; as likewise doth the now Bishop of *Durham*.

Lichfeild. 8. The Bishop of *LICHFIELD* and *COVENTRY* (of old call'd the Bishop of *Chester*, before the new Erection of the new Bishoprick of *Chester*) had his Place where *Somerfet-house* is builded.

As

9. 10. As likewise the Bishops of WORCESTER and LANDAFF had there sometime a House, as *Stow* in his Book of the Survey of London saith. But the said three Bishops Places, together with a Parish Church call'd *Straunde-Church*, and the greatest Inn of Chancery call'd *Straunde-Inn*, belonging to the *Middle Temple*, were defaced without recompence to any of the said three last mentioned Bishops, Parish Church, or Inn of Chancery: Other than to the Bishop of WORCESTER, who had in respect of his former House, a House in the *White Fryers*, which he enjoyeth.

11. *Arendell-house* (now the Lord Admiral's) was the Bishop of BATH and WELLS's, and was assured, in *Edw. VI.*'s time, to Admiral *Seymer*; and is now quite sever'd from that Bishoprick without recompence.

12. Likewise the Bishop of EXETER's Place, after call'd *Paget, Leicester*, and *Essex-house*, of the several Owners of the same. And it is thought the Bishop of *Exeter* hath likewise no recompence for the same, of any other House in or near London.

13. The Bishop of SARUM's Place (now call'd *Dorset-house*, before call'd *Sackville-house*, and of former time *Salisbury Court*, being in long Lease made by Bishop *Capon*, who was Bishop there in *Hen. VIII.* *Edw. VI.* and Queen *Mary's* time) was exchange'd temp. *Regina Elizabetha*, by the Great, Learned, Reverend Father Bishop *Jewel*, for recompence of good Value in Lands in his Diocess, or elsewhere in the West Country.

14. The Bishop of ST. DAVID's Place was near adjoining to *Bridewell*, upon the Ditch that runneth to *Fleet-bridge* into the *Thames*; and was granted in Fee-farm for a Mark Rent (temp. *Edw. VI.*) to Dr. *Hewick* the Physician; under which Purchase the same is now enjoy'd.

15. The Bishop of HEREFORD's Place (as *Stow* in his Survey of London, pag. 357. saith) is in the Parish of St. *Mary de Monte Alto* or *Mount-halt* in London; of which Bishop's Patronage the said Church also is; which Place is in the tenure of the Bishop of *Hereford* or his Tenants.

16. 17. The Bishop of LONDON's Place at *Paul's* was never sever'd from the Bishop's Possession. And likewise *ELY* Place, from the Bishop of that See; other than such part thereof, as the late Lord Chancellor *Hatton* had by Lease for many Years, from the late Bishop *Cox*.

18. The Bishop of BANGOR's House is, or lately was, Mr. *Aleworth's* House in *Shoe-lane*, by a Lease from the Bishop of that See, temp. *Edw. VI.* yeilding some Rose, or other small or not valuable Rent.

19. The Bishop of LINCOLN's Place was *Southampton-house* in *Holborn*, convey'd temp. *Edw. VI.* to the Lord *Wrislesley* (then Lord Chancellor) in Fee, for which the Bishop hath no other House in or near London, as is thought.

20. The Bishop of CHICHESTER's Place (or Palace, as *Matthew Paris* in his Chronicle calleth it, being the story of the Lord Archbishop of *Canterbury* visiting St. *Banesh*) did at that time lie in that House which was in *Chancery-lane*, where *St. Richard Read* sometime a Master of the *Chancery*, and Mr. *Atkinson* the Counsellor at Law, and others, dwelt and dwell in; and is said to be in Lease from the Bishop's Predecessors for divers Years. What the Rents reserv'd yearly be, the Lease will shew the same.

21. The Bishop of ST. ASAPH never had Place at or near London, that I can learn of; neither in the Valuation of the See (where all his Possessions and Jurisdictions be valu'd in the *First-fruit Office*) is there mention of any such Place; neither doth the now Bishop of that See know the same.

22. The Bishop of the ISLE of MAN (call'd *Sodrensis Episcopus*) altho' the same be an ancient Bishoprick, yet was he never Lord of the Parliament of England; having no Chapter or other Clergy, but only an *Archdeacon*, and all the Incumbents of the several Parishes of that Isle: And before the said Statute of 33. *Hen. VIII.* was neither a Suffragan of the Province of *Canterbury*

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Canterbury or *York*. But by that Act of Parliament, the Bishop of *Man* is made a Suffragan of the Province of *York*; as the Bishop of the new erected Bishoprick of *Chester* late was; which Bishoprick of *Chester* being newly erected of the uniting of the two Archdeaconries of *Richmond* and *Chester* by the King, by Authority of Parliament, granting the King Power to make new Erections of Bishopricks, 31. *Hen. VIII.* cap. 9. But what Places of dwelling the said Bishoprick of *Chester*, and the Bishopricks of *Oxon.* *Bristol.* *Gloucester*, and *Peterborough* (being newly erected by King *Hen. VIII.*) have or had I do not know. But the Bishoprick of *WESTMINSTER*, erected newly about 34. *Hen. VIII.* whereof Dr. *Thorlebye* (after Bishop of *Norwich* and *Ely*) being the first and last Bishop of that See, had for his Place Mr. *Dean of Westminster's* Lodgings; and the Dean then had the Lodging now in the possession of Sir *John Fortescue* Chancellor of the Dutchy of *Lancaster*; as some that were Schollars at *Westminster* at that time have inform'd me.

Chester.
Oxon.
Bristol.
Gloucester.
Peterborough.
Westminster.

F I N I S.



.....

T W O

DISCOURSES:

I. Of the

Admiral-Jurisdiction,

AND THE

O F F I C E R S

T H E R E O F.

II. Of Antient

DEEDS and CHARTERS.

Written

By Sir *HENRY SPELMAN* Knt.

And now first publish'd from the Originals.

.....

DISCOURSES

Admiral-Jurisdiction

OFFICERS

DEEDS and CHARTERS

By Sir HENRY SPELMAN Knt.

And now first published from the Originals

OF THE
Admiral-Jurisdiction,
 AND THE
O F F I C E R S
 T H E R E O F.



THE Admiral Jurisdiction, and the Officers thereof, were unknown to the aunyent *Romanes*, who determined all Controversyes, as well of the Sea as Lande, by the same Judges, without distinction. So likewise here in *England*, till the Times of *Ed. III.* all maritime Causes were tried and censured by the Judges of the Common Lawes. And the Sheriff and Crowner in every County were Officers as well for Sea as for Lande, within their Limits. Fish Ryall, Wreck, and Sea Rights belonged to the Sheriff, and were by him accompted for into the Chequer. But when the *Romanes* undertook the first *Punick* Warrs, and were now compelled to fight at Sea, which hitherto they had always done upon the Land, they not only erected a Navy, but appointed Officers also to take charge and care of it.

*Of the Etymologie of the Name of Admirall,
 and the Beginning thereof in England.*

MUCH Variety of Invention there is for deriving the Word *Admiral*. Some would have it to come of *Emir*, which in the Language of the *Moores* signifieth him whom we call *Admiral*, and would therefore write it *Emiral* or *Amiral*. Others, as *Paul Emilius*, and after him *D. Caius*, fetch it from the *Greek*, making a Composition of *ἀλμυρός*, which sometime by translation signifieth Mariners, and *ἀρχός*, which is *Princeps*, and so *ἀλμύραρχος* to signifie him who is the Cheife of the Sea or Governor of the Navy; concluding the primarie Word to be *Almyrarch*, and the Word *Admiral* by a little corruption to descend from thence. And this Opinion they think to have the more likelihood, for that the *Spaniards* at this day name him the *Almirante*. Others make it like a *Centaur*, half an *Arabian* Word, and half a *Greek*, saying, that *Amira* or *Amūros* among the *Arabians* signifieth a Prince, Commander, or chief Man, and *ἀλις*, in *Greek*, maritime, or belonging to the Sea, and conjoyned, *Amiralus*, to signifie the cheif Governor of the Sea, for which cause also the more learned of the *French* write it *Amiral*. For my own part, I think the Word hath no portion of the *Greek*: For as it is harsh to fetch it from *ἀλμυρός*, which properly signifieth not the Sea, but Salteneſs, so it hath not been written with *y*, as it ought, if it had

F f

come

come of *ἀλμυρίς*, but with *i*; though some of late, to make out the Devise, have prescribed to write it *Almyral*.

Neither do I see any likelyhood why the *Arabians* or *Saracens* should borrow any *Greek* Words for composing of their Names of Office and Dignitie; for I hold it out of doubt that the Name was first in use amongst the *Saracens*, and from thence, by reason of the Warrs of the Holy Land, brought amongst us about the tymes perhaps of *Richard I.* or *Henry III.* But to be short; I finde that not only *Amira*, but *Almiralle* also, in the *Arabian* Language, doth signifie a Prince or cheif Ruler, and was the ordinary Title of the Governors of all Cities and Countreyes through all the Territories of the *Saracens*; even from *Spain*, when they possess'd it, unto the uttermost Parts of the lesser *Asia*. And *Mahomet* himself was so called, of whom *Trevet* speaking, saith, *E entre Sarazins ordina 4 pretours, qui sont appellez Amiraills, & il se fist mesme appeller Amirail ou proto-simbolos*, pag. 143. And that therefore they called the Commander of their Navy by that Name, as a Name of Dignity and Estimation.

1272. 56
Hen. III.

The Author of the Additions to *Matthæus Parisiensis* hath these Words: *Hoc an. Edwardus dum apud Acon moram trahit, quidam Admirallus Joppensis, natione Saracenus, quæ dignitas apud nos Consulatus vocatur, fama probitatis ejus electus est in amorem ejus, &c.* By which it appeareth, first, that the Word was an *Arabian* or *Saracen* Word. Secondly, that it was of the Dignity and Place of *Consulatus*, which the Writers of that time used for an Earledome, or Estimation of an Earle. Thirdly, that as it was not then sufficiently known in these Parts of the World, and therefore he declareth the Meaning of it. Besides; our old Records seem to have understood it for an Earle, Prince, or Ruler, and therefore for distinction sake often added the Words of *Flota* and *Flotæ Navium*, and *Talis plage*; as, *Admirallus Flotæ*, *Admirallus Flotæ Navium*, and *Admirallus Plage occidentalis*; as if you would say, the Earle, Cheif, or Commander of the Fleet of Shippes, or of the Western Parts, &c.

Nic. Trevet, f. 102.

N. Trevet saith, that in the great Shipp of the *Saracens*, which he calleth a *Dromond*, taken by *K. Richard I.* as it went to relieve *Acres*; *e estoient en la nef q stoit se grand sept Amiraills*; whereby it should seme it was rather a Name of Dignity then Office, for there could not need so many Admirals for one Ship. It is recorded by *Radulphus Cestrensis*, that the noble *K. Edgar* had a Navy of 4000 Ships (or as *Matthew Westminster* saith, 4800 *robustas naves congregavit*) *ex quibus omni anno post festum Paschale 1000 Naves ad quamlibet Angliæ partem statuit. Sic æstate insulam circumnavigavit; hyeme verò judicia in provinciâ exercuit. Et hæc omnia ad suum exercitium & ad hostium fecit terrorem.* There is no doubt but these great Navies had competent Officers and Governors, by what Names soever they were termed. But, as I said, the Name of *Admiral* was not yet among them: For I think that before the Times of King *Henry III.* it was not known among us. I my self have not read it in any Author of more Antiquity, no nor in the Authors of that time it self. The Laws of *Oleron*, made in the Year 1266. and handling only marine Causes, make no mention of it; neither doth *Bracton*, writing about that time of the Laws and Customs of this Land, and in diverse Passages handling Sea-matters, maketh not any mention thereof. For more proof, the Charter of the 8th Year of *H. III.* whereby he seemeth to grant the Office of Admiralty to *Ric. de Lacy*, useth not the Word *Admiral*, but only graunteth *Maritimam Angliæ*; but after the 56th Year of his Reign, when his Son *Edw.* had been at *Acon*, then not only the Historiographers but the Charters themselves use the Term very ordinarily.

A little

*A little Digression to the Beginning and Antiquity
of Courtes, thereby to bring us to the Office and
Courtes of Admiralty.*

AT the time of the Conquest there were only two kinds of Lay Courtes, the King's Court, wherein (as *Solomon* did) he sat himself, and the Country Courtes, then called in *Saxon* gemote, that is to say, Meetings or Assemblies. The Country Courtes were the same that now are, namely, the Sherifes Tourne, called *scyre gemote*, which was general for the whole County. The Hundred Courtes, named Hundred gemote, and the Halle Courtes, named by the *Saxons* heallamote, and after by the *Normans* Court Barons for the Mannors. Also the Burrough or Tything Court then and now called the Leete.

The most valiant and first renowned King for excellent Learning, *Alfred* Trent, p. 164. the *Saxon* (who for glossing diverse Books of the Bible is of the Auncients surnamed the Commentor) divided this Realme into Shires, the Shires into Lathes, Rapes, or Rydings, and them again into Wapentackes or Hundreds, and those also into Leets, Burroughs or Tythings; assigning unto every of them particular Jurisdictions: and Judges, then called *Reves*, within their several Precincts, had Authority according to the Nature of their Courts, to hear and determine all matters; committing the chief and greatest Authority to the Reve or Alderman of the Schire, now called Schire Reve or Sherive. Matters of Difficulty or Appeal (by the Example of *Moyse*) he reserved to himselfe, which he used to hear in person, assisted with his Councell. Whereupon it is said before of *K. Edgar*, *Hyeme judicia in provincia exercuit, i.e.* In the Winter-time he heard and judged the Causes of the Country. But because the King might not be troubled with ordinarie matters, *Edgar* made a Law *Ne e face, &c.* *Let no Man seek to the King in matter of variance, unless he cannot find Right at home: But yet if that Right be too heavy for him, let him seek to the King to have it lightned.* Out of which Law one observeth four things: 1. That every Man have meanes at home to recover his Righte. 2. That no Man ought to sue or draw his Plea out of the Country without good cause. 3. That the King himself had an High Courte of Justice, wherein it seemeth that he sat in Person; for the Words be, *Let him seek to the King.* And lastly, that the same Court did judge not only according to meer Righte and Lawe, but also after Equity and good Conscience; for the Words stand thus: *If that Right be too heavy, then let him seek to the King, &c.* Whereby it seemeth that he should have the Rigor of Law mitigated by the Conscience of the Prince. These Courts continued thus both at and in the tyme of the Conqueror, and diverse Years after; although intestine Warrs, and the Troubles of an Estate nuly achieved by Armes, disturbed their Courtes. And although the Conqueror enterlarded diverse of his *Norman* Customes, refining and polishing also what he thought good in the antient Lawes and Usages of this Kingdom, as Tyme, Invention and Necessity gave occasion: Yet did neither he nor his Successors alter the Course of the Country Courts, but leaving to them their ancient Usages (though with some declination) they remain to this day. For as *Alba* still decay'd as *Rome* encreased, so the County Courtes declined as the high Courtes grew up in greatness. The Conqueror finding himself, as I said, like *Moyse*, overburden'd with the business of his Royall Courte, first severed from it the Accompts and Causes of his Revenues and Crown Lands,

Escheates, Wardeships, and such like; allotting them, as *Gervasius Tilberienfis* writeth, to a peculiar Court instituted much after the manner of his Eschequet in *Normandie*, and therefore here also so entitled *Henry II.* in the 23^d Year of his Reigne, divided the Realme into six Circutes, appointing to every of them three Justices, named of their traveling (to distinguish them from the other that were resident in the high Royal Court) *Justices in Eyre, Itinerante* and *Errant*; which had conilance bothe of eriminal and civil causes.

In *Henry* the III's time, as appeareth by *Magna Charta*, the Common Pleas for matters between Party and Party were also taken from the same royal Courte, and appointed to a particuler Courte now so called.

About this time also, or in *Edward I.* the high Courte of Chancery seemeth to be taken from thence, and to have had her beginning; tho' the Name of the Chancellor, and his Office, as touching keeping the Seal, and chief Employments of the Estates, be more ancyent than the Conquest. For *In gulphus*, speaking of *Turketul*, Chancellor to *Edredus* the Saxon King, termeth him *Cancellarius ejus ac precipuus Consiliarius*. And it may be, that when *Edw.* the Confessor had his Seale made, and sent him by the French King, that this great Officer of State entred then also with it, for he is also found in the Charters of King *Edw.* the Confessor. *William* Bishop of *Ely*, Chancellor to *Richard I.* was so great, as he would have no Peer in *England*, doing in the Affairs of the Kingdome what he listed, *Hoved.* 391. b. 30. But he was Chief Justice also, 378. b. 40. 379. a. 28. I find also a Vicechancellor 2 *Richard I.* namely, *Roger Malus Catulus* drowned in the Tempest going from *Messana*, and found with the King's Seal about his Neck.

f. 496 a.
8. b. 499.
2.
R. Hoveden, f. 386.
b. 30. f.
303. a. 30.

In *Edw.* II's time were Justices erected of Assise, endowed with larger Authority than the Justices of Eyre, as having Power to take Assises in every Countrey, and afterward with others to take Attayntes, Juries and Certificates, and deliver Goals also.

After all this the Kings yet eased themselves, and this their high Court, by delivering over a great Branch of their Affaires, touching the Peace and criminal matters, unto the *Custodes Pacis* and Justices of Peace. So that as the great River of *Cydis*, being by *Cyrus* dispersed into many Branches, retayned but a slender Stream in his antient Channel; the Kings of *England* having divided the Affairs of their high royall Court unto so many several Courts and Officers, reteyned now unto themselves but a small Current of the Affairs of Justice in their high Court of their Royal House.

After all this the Sovereigne Administration of Justice in marine Causes remained still for the greatest part in the King's House; yet had he in some sort delivered Branches thereof over unto his Ministers: as namely unto the Justices of Wreck mentioned in the Statute of *Westm. I. an. 3. Ed. I.* and to the Justices of Eyre, who held plea thereof before the Stat. of *Richard II.* which made those Causes triable in the Courte of Common Lawe. But I don't find how Contracts and Actions arising on the maine Sea were then discuss'd.

Who had the Rightes and Jurisdiction of the Sea, before it was assigned to the Admiral.

IT shall not be impertinent, if before we speak of the Erection of the Admirall Courte, we shew in what estate the Tryal of marine Causes stood in the Times of the precedent Kings. For though there were many Admirals before the time of *Ed. III.* yet I find not that they had any Jurisdiction therein; but to use the Words of *Tho. of Walsingham*, speaking of the Admirals

miralls of 18. *Edw. II. Custodiam maris habentes & facultatem plenam, per Regis Commissionem invadendi, infestandi & diripiendi quoscunque de Francia Mercatores, &c.* They had the keeping of the Seas, and full Authority by the King's Commission to invade, annoy, and spoile all French Merchants. So that in short they were Admirals for militarie Action, not for Civil Jurisdiction, of the same sorte that the *Praefectus Classis* and *Duumviri Navales* were among the Romans. As for marine Causes, it seemeth that they of the highest nature received their Sentence in the King's House before himself and his Counsell; and that matters of less importance were according to their Quality one while acted before the Sheriffs in his County, another while before the Justices of Wreck, and other the King's Justices, when they were assigned: For it is evident by many Records, that the Sheriffe (and sometimes the Crowner, but the Sheriff especially) received all Wrecks, Perquisites and Profits of the Sea, as well as of the rest of the County, and accounted for them to the King; and I think he is still his Officer to that purpose in the eye of the Common Lawe. So that if at any time there be a Vacancy of the Admiraltie, he may yet seise and take them *ex officio*, where the Statute of *Westminster* the first restraineth him not. And I am in some doubt, whether the Amiral may do so or not: As namely, if the King should graunt *J. S.* the Office of Amiral in the County of *Norfolk*, without other Words, whether he shall meddle with marine Perquisites as incident unto his Office, yea or no.

To clear the question, in the Patents of the LL. Admirall of *England*, they are granted by particular enumeration; but in Times past (as namely before *Edw. III.*) when those Particularities wanted in their Grantes, they dealt not with them, as appeareth by the Statute of 27 *Edw. III. cap. 13.* one of *Westminster* the first, concerning Wreck made *an. 3 Ed. I.* Where the ordering of matters of Wreck are committed to the Justices of Wreck, the Sheriff, Crowner, or King's Bayliff: By which also it is evident, that there were peculiar Justices appointed to that purpose. Furthermore it appeareth by a long Record of 18 *Edward I.* in the Custody of the Chamberlain of the Exchequer, that the Right of Wreck was then triable at Common Lawe: Whereby it is also evident, that the Stat. of 15 *Richard II. cap. 3.* enacting that Wreck of Sea should be tried by the Laws of the Land, and not before the Amiral, was but in affirmance of the Common Law. The Record is, that *R. de Monte Alto* brought his Action against diverse for Wreck taken up at *Tichwel, Hunston, Snetsham, &c.* to the value of 3000 *l.* The Jury found for him, and cessed Damages to 200 *l.* but to stay Judgment, the King's Attorney shewed, that the Wreck in those places longed to the King.

And it seemeth, that in the Times of *Henry I.* the Circle of Justice moved upon the same Center, as may be gathered by many Monuments in the Foundation book of *Ramsay Abby*, out of which I will recite two Writts and a *Constat* or Reporte of the tyme of *Henry I.* touching these matters.

Henricus Rex Angliae R. de Bellaf. & R. de Passelewe, & Justiciariis de Norfol. salutem. Sciatis quod volo & precipio, ut Sanctus Benedictus de Rames. ita bene & libere habeat Socam & Sacam suam, & jacturam Maris in terra sua de Brancaster, sicut Ailsius Abbas dirationavit hoc in tempore patris mei, & homines sint in pace & in respectu de placito crassi piscis, donec Abbas & W. de Albini interesse possunt. T. W. de Hoston apud Bramton.

The Report or *Constat* is this: *Omnibus decorem domus Dei diligentibus notum esse volumus, Reinaldum Abbatem Ramesensem apud Udpupelle in praesentia Roberti filii Walteri eo tempore Vicecom. & Alani Subvicecom. Norff. & Suff. &c.*

After

After which it seemeth the King's Writ to the same Sheriffe in these Words: *Henricus Rex Angl. Robertus filius Walteri & Ministeris suis de Norfolc. salutem. Præcipio quod Abbas Reinaldus de Ramse habeat ita bene, & in pace & iuste, omnes Consuetudines suas de Brancestrea & Ringsteda & de Wree Maris, sicut inquam aliquis antecessor suus melius habuit & dirationavit. T. Pag. fil. Johannis apud Wodstock.*

By which it appeareth that the Sheriff (for so were *Radulphus de Bel-fage* and *Rob. Fitz-Walter*, as the *Constat* witnesseth) was the King's Officer touching Wreck and *Grampise*, as he was touching other matters of his Country; and that the same things were in like manner subject to the King's Writ.

P. Malm.
Hoved.
386. b.

2. That he had Justices at that time assigned to that purpose, whereof *R. de Passelew* was one, otherwise the Writ were in vain directed to him.

3. The matter seemeth to be *Vicountiel*, because it should have been *directionat testimonio virorum novem Hundredorum jurare paratorum*, &c.

4. Then that *Ra. Passelew*, the Justice, had as well as the Sheriff medled with the *Grampise*; for both of them gave pledg unto the Abbot to make restitution with advantage.

5. That the Abbots Suite was prosecuted against the Sheriffs and the Justice, as Persons from the King, and adjudged against them.

6. The Places where the Pleas were holden were *Norwich* and *Thetford* for *Norff.* *Chelmeford* for *Suff.* But *Quere*, in what Courte, or before whome; for Justices of Assise, nor of Eyer, as we have shewed before, were then erected. *Welle* seemeth to be before the Abbots Justices, for it was in his Liberty. *Quere.*

Of the Beginning of the Admiral Jurisdiction now in use.

Seeing then, that neither the Stat. *de Wrecco Maris* of 3 *Edw. I.* nor *de Officio Coronatoris*, an. 4 *Edw. I.* speaking of Wreck, nor any other auntient Statute, nor *Bracton* nor *Britton* handling matters at this day proper to the Admiraltie, do so much as once mention it: And also for that the Law of 27 *Edw. III. cap. 13.* appointeth such Goods as come a land out of any Shipp broken upon the Sea Banks, to be redelivered to the Owners, paying to them that saved and kept the same, convenable for their travel by the Discretion of the Sheriffs and Bayliff and other Ministers in Places gildable, or in Franchises by the Steward and Wardens, by the advise of four or six discreet Men of the Country, in each case, without mentioning Amiral or Admiraltie. I am induced to think, that at this time also the Jurisdiction was not severed from the King's House; notwithstanding it is very manifest, that before the End of his Reign the Amiral had obtain'd it. For by the 13th Year of *Richard II.* it was grown so much out of order, as a special Law was made to reduce it to the fashion it had in the time of *Edw. III.* (as to the original Type) enacting that the Admirals, and their Deputies, should not meddle with any thing done in the Realme, but only of things done upon the Sea, as was duly used in the time of K. *Edw.* Grandfather of the laid King *Richard*, 13 *Ric. II. cap. 5.* In which Law the very Worde *duly* doth in some sort, by implication, discover the Beginning of the Office to have been at that time; for that Laws and Offices are never after so duly executed, as at their first beginning. It seemeth therefore that King *Edw. III.* after the 27th of his Reigne, being laden very heavily with the Wars of *France*, and foreign Affairs,

Affairs, and encomber'd also with marine Causes, by reason of the great Trade of Merchandizes then flourishing, somewhat to lighten the Ship of his royal Cares, delivered these Businesses over unto the *Amiralls*, which were not, as it is now, one for all *England*, but diverse according to several Limits, and several Necessities. *Tho. Walsingham*, in 12 *Ed. II.* nameth *Tres Admiralli trium plagiarum Anglie*, viz. *Dom. Jo. Oteron*, *Dom. N. Kyriel*, & *Dom. Jo. de Felton*. In the 22^d of the same King, he saith, *Navigium ad custodiendum mare in tres classes distinxit, tres proponens ei Admirалlos*, viz. *Gernemuthensibus* & *ceteris illius partis navibus Jo. de Botecurts*, *Portesimuthensibus Wil. de Leybourne*, *occidentalibus vero navibus & Hibernicis Militem quendam de Hibernia orinndum*. In *Ed. III.* *Jo. Howard* was appointed Admiral of the North Parts. 8^{vo}. *Julii*, 24. *ejusdem Regis Jo. de Beuchamp* of *Warwick* was made Admiral both of the North and West Parts. In 1 *R. II.* *Robert Hales*, Prior of the Hospital of *St. John* of *Jerusalem* in *England*, was made Admiral *Flote Navium ab ore Tamisæ versus partes occidentales*. 5 *R. II.* *Jo. Roches*, or *de Rupibus*, is made *Admirallus Flote ab introitu portus ville Southampton versus partes occidentales*, substitutus loco *Walteri de Hanley*.

And I think it is not without difference, that in some Patents they are named *Admiralli talis Plage*, and in other *Flote navium*. But in 12 *Ric. II.* *Richard Fitz-Allen* the younger is made *Admirallus Anglie*, and for ought that I can find, is the first that carryed that Title. For though it appeareth that *Henry III.* in the 8th Year of his Reigne granted to *Ric. de Lacymaritimam Anglie*, yet dare I not expound it to be the Admiralty of *England*, but some Branch of the King's Right now belonging to the same.

Pat. 8.
Hen. III.
m. 4.

The Admiraltie is an Authority belonging to the King, for determining Causes concerning the Seas.

- In this we are to consider
1. The Persons whom it concerneth.
 2. The Place where it lieth.
 3. The Causes in which it dealeth.
 4. The Course by which it proceedeth.

Of the Persons whom it concerneth: And first of Proprietaries.

THE Persons whom the Admiraltie concerneth are of three sorts: Proprietaries; Officers, or Suiters.

PROPRIETARIES.

Proprietaries are those that have Admiral Jurisdiction, Wreck of Sea, or other marine Perquisites in their own Right: Whereof some be immediate, as the King, to whom it belongeth of common Right: Others be mediate, as those that have it by the King's Graunt, or by Prescription in Cases where it lieth.

The King, I say, hath it of common Right by his Prerogative, and the Statute of Prerogative.

Admiral Jurisdiction, as Port-Courts, and Authority to hold Plea of Admirall Matters, lieth only in Graunt, and cannot be prescribed for as Wreck may.

The

The King graunteth to *J. S.* and his Heirs, Admiral Rights, &c. without reciting that he hath granted them before to the Lord Admiral for the time. It seemeth this Grant is not good neither in the Life of the Admiral, for that they were formerly granted unto him; nor after his Death, for that the special Matter is not recited.

The King granteth *John at Stile* all Admirall Rightes in his Mannor of *Dale*; *J. S.* misuseth them; it seemeth the King may seise the Jurisdiction; but not the Wreck of Sea.

Of the Officers of the Admiraltie: And first of the High Admiral of England.

I Have spoke before of the Etymologie of the Word Admirall, and the Beginning of the Office, and therefore though the Progres of the matter reduceth me again to speak of him as the highest Officer, yet must I refer you to that which is said before, and that which after followeth, in the Title of the Causes wherein the Lord Admiral and Admiraltie dealeth.

Quere, Whether the Lord Admiral of *England* be sworne or not; for the Admiral of *France* is. *Anneus* Duke of *Joyeuse* was sworne in the Courte of *Paris*, 19. *Jun.* 1582. and next him the Duke of *Esperbune*, 11. *Jan.* 1588. *Chop.* 197.

Of the Conservator of Truce, to whom Admiral-Authority.

Of the Vice-Admiral.

THE Vice or Deputie Admiralle, called also the Admiral-Lieutenant, or Commissarie, seemeth to have had his beginning sodainly after the Erection of the High Admiral; for the first Statutes that mention the one, mention also the other, *viz.* the Stat. of the 13 and 15 *R. II.* cap. 5. & 3. By both which Statutes it may be gathered, that that Place was then in effect as it now is. And as his Name implieth him to be the minor Officer of the High Admiral, so it seemeth, that he is only to be appointed by him; inso-much that if the King, in the Vacancy of the High Admiral, by his Letters Patents should grant unto *John S.* the Office of Vice-Admiral of *N.* during his Life, it seemeth not good any longer than during the Vacancy; and for that time it seemeth good, for that the King himself is then High Admiral.

Also it seemeth that the High Admiral himself cannot grant it for longer than his own time, being but a Trust and fiduciary Power, and resting only in privy between themselves; yet in the Patent of the Lord Admiral it is granted expressly unto him, that he may ordain and appoint the Vice-Admiral, and all other Officers, during the Lives of every of them.

For this reason it seemeth also, that the Vice-Admiral cannot make a Deputy, for Trust cannot be transferred. *Quere*; for the Vice-Admiralls have always used to make Deputys.

It

It is also expressed and granted in the Queen's Patent to the Lord Admirall, that his Vice-Admirall, Deputyes and Commissaries, &c. shall have *plenam potestatem & jurisdictionem in supradictis causis & negotiis, &c.* viz. in the Causes wherein the Lord Admirall's Authority lieth, by which Words it seemeth, that he is more than a Deputy. And the Parents of the Lord Admirall and Vice-Admirall remeth in *Officium Vice-Admiralitis*; and the Lord Admirall granteth usually to the Vice-Admiral, that he may appoint a Deputy or Deputyes, and all other Officers, by colour whereof the Vice-Admiralls continually use to grant the Office of the Judge Register, &c. but they work surest, who take it from the Lord Admirall himself, under the great Seal of the Admiralty: For if the Vice-Admirall appoint a Judge, and then the High Admirall appoint another, *Quare*, if this be not a Discharge to the former.

But the Vice-Admirall sometyms hath set in the lower Courtes for Judge himself, without appointing any other. The Vice-Admiralls in their severall Limits have commonly the whole Authority of the Lord Admirall as largely as he can grant, both for Jurisdiction, and also for appointing of Officers. *Quare*, how far it is good.

Of the Register.

THE Registers of the Admiraltie are so named, for that they should *redigere in Registra*, that is; register the Acts and Proceedings of their Courtes. But howsoever the Acts of the High Court of Admiraltie are kept, I think none are kept in inferiour, otherwise than in a scribled Book for the present memory; but nothing ingrossed to remain of recorde for preservation of the Rights of the Admiraltie: Neither are the Presentments of Juries in their ordinary Courtes so much as entred into that rude Book, but put together in such tattered Papers, as the Jurors bring them in, and kept in the Pocket of the Register, to direct the Marshall what he shall collect, without farther respect; and therefore these Courtes, thus huddled, are not worthy to be Courtes of Record. So that if any Question be of Wreck, or other Admirall Rights, let the Lord Admiral prove what he can by Witnesses; for he shall find nothing in the Register's Office to impugn any Man's Title or Prescription.

It is more to be misliked, that in their solemn Sessions, where Fellons and Pyrates receive Sentence of Death, there remaineth, I fear, no other Record of their Proceedings: So that Corruption of Blood, and Forfeiture of Lands, after the Death of the present Register, will hardly be proved, if it come in question.

The Registerships are in the Gift of the High Admirall of *England*, not only by special Grant in his Patent, but also as incident to his Office: And usually he granteth them to be disposed by his Vice-Admirall. See *Dier* 152. An Assise brought by *Hunt* of the Office of Register and Scribe of the principal Court of the Admiralty of *England*, which belonged to the Gift of the Admiral of *England*, to dispose to whom it pleased him time out of memory.

Lib. Intrationum 75. In assise for the Register, he shewed for Title, that the Admirall had used time out of Mind, &c. to name the Register, &c. and said not that by Deed the Admirall named the Plaintiff to the said Office, &c. And upon this the Assise came.

Of the Places subject to the Admiraltie.

THE Place subject to the Admiraltie is of two sorts, one in respect of Jurisdiction, the other in respect of Coercion only.

The Place of Jurisdiction is the Sea, which is either common or appropriate.

The common Seas are those which lye so remote from every Prince, as none may justly claim them unto him, or to have any generall Jurisdiction, but every of them particularly over his own Subjects there.

The appropriate Sea is that which joyneth to the Territories of any Prince, as namely his Majesty of *England*: the face thereof be free for all Men as touching and Navigation; yet the Beddy and Soil belongeth to the particular Lord: so that no Man haply ought to cast a Net or Anchor therein, but by his Favour and License, for which they commonly render Toll and Custome.

By this reason the King of *Spaine* doth not only monopolize the Fishing for Pearle, and the Wealth of the *Indian* Seas, but in jealousy thereof, the very Liberty of Navigation also. And the Kings of *Denmark* in times past have compelled our Countrymen using the *Iseland* Fishing, to pay a Custom or Tribute unto him, as King of those Seas.

By the same reason might the King's Majesty of *England* encrease the Renewes of his Crown; insomuch as not less than 15 or 1600 Sayle of Foreigners do yearly frequent the Fishing of his *English* Seas, and 6 or 800 more the Seas of *Ireland*. *Guicciardine*, in his Description of the *Low Countries*, affirmeth, that the *Low Countrymen* make yearly in clear Gain four hundred and ninety thousand Pounds Sterling of the Herrings taken in our Seas. And it hath been discreetly accounted, that the foreignt Fishings upon the Seas appropriate to these Kingdomes of *England* and *Ireland* are not less than ten hundred thousand Pounds *de claro* yearly, out of which the King's Majestie notwithstanding hath little or no Profit.

Also the Conservator of Truce assigned by the King in any Porte hath the same Power as the Admirall; except in case touching the Death of a Man, which is always reserved to the Admirall, and his Lieutenant, 2 *Hen. V. cap. 6.* by which it appeareth the Admirall had cognifance of the Death of a Man before the Statutes of 28 *Hen. VIII. cap. 15.*

Of the Place where the Admiraltie consisteth.

THE Place or Sphere wherein the Admiraltie hath her Motion, is of two sorts; the one proper, the other accidental.

The proper Place is that where her Jurisdiction lieth, which is either absolutely, or but in part.

The Place absolutely subject to the Jurisdiction of the Admiraltie, is the Sea, which seemeth to comprehend publick Rivers, fresh Waters, Creekes, and surrounded Places whatsoever within the ebbing and flowing of the Sea, at the highest Water, the Shore or Banks adjoyning, from all the first Bridges to the Sea-ward. For in these the Admiraltie hath full Jurisdiction in all Causes criminal and civil, except Treasons, and Right of Wreck.

The

The Places imperfectly subject to this Jurisdiction are the Parts beyond the Seas, and forreigne Countries, where by the King's Commission it hath cognifance and full Power of Oier and Terminer of civil Causes and Trespafes there arising, but not of criminal between his Subjects.

These Places are allotted to the Admiraltie either by the Statutes of the Lande, or by the King's Commission.

The Statutes are in these Words:

" Because the Admirals, and their Deputies, hold their Sessions within
" divers Places of this Realme, as well within Franchise as without, ac-
" croching to them greater Power than belongeth to their Office, in preju-
" dice of our Sovereigne Lord the King, and the common Laws of the
" Realme, and in great blemishing of diverse Franchises, and in destruction
" and impoverishing of the common People: It is accorded and assented,
" that the Admiralls and their Deputies do not meddle from henceforth of
" any thing done within the Realme, but only of things done upon the Sea,
" as it hath been duly used in the time of King *Edward*, Grandfather of
" our Lord the King that now is, *A. 13. Ric. II. cap. 5.*

After which ensued another Statute more, to explain the former, in these Words, *viz.*

" Because the Admiralls and their Deputies do encroach unto themselves
" diverse Jurisdictions and Franchises more than they ought: Be it, &c.
" That all manner of Contracts, Pleas and Complaints, and of all other
" things arising within the Boddies of the Counties, as well by Land as by
" Water, and also of Wreck of the Sea. The Admirals shall in no wise
" have cognifance, Power, nor Jurisdiction, but that all such manner of
" Contracts, Pleas and Complaints, and all other things rising within the
" Boddies of the Counties, as well by Land as by Water, as afore, and al-
" so Wreck of the Sea, shall be tried, determined, discussed, and remedied
" by the Laws of the Land, and not before, nor by the Admirall, nor his
" Lieutenant in no wise.

" Nevertheless of the Death of a Man, and of a Maime done in great
" Ships being and hovering in the main Stream of the great Rivers onely,
" beneath the Bridges of the same Rivers nigh to the Sea, and in none o-
" ther place of the same Rivers, the Admirall shall have cognifance, and to
" arrest Shippes in the great Floats, for the great Viage of the King and his
" Realme, saving always to the King almannor of Forfeitures and Profits
" thereof coming; and he shall have also Jurisdiction upon the said Floats
" during the said Viages only, saving always to Lords, Cytties and Burrows,
" their Liberties and Franchises. *An. 15. Ric. II. cap. 3.*

And because the Statute of *13 Ric. II. cap. 5.* imposed no Penalty on them which should do against it, it was after provided by *2 Hen. IV. cap. 11.* " That the said Statute (*viz. of 13 Ric. II. cap. 5.*) be firmly holden
" and kept, and put in due execution. And moreover the same our Sove-
" raigne Lord the King, by the Advice and Assent of the Lords Spiritual and
" Temporal, and at the Prayer of the said Commons, hath ordained and
" established, that as touching a Payne to be set upon the Admiral or his
" Lieutenant, that the Statute and the Common Law be holden against
" them, and that he that feeleth himself grieved against the Forme of the
" said Statute, shall have his Action by Writ, grounded upon the Case, a-
" gainst him that doth so pursue in the Admirall's Courte, and recover his
" double Damages against the Pursuant; and the same Pursuant shall incur
" the Pain of *10 l.* for the Pursuite so made, if he be attainted.

One Poyntell, and one Reynolds of Melcomb in the County of Dorset, bought a Ship and a Boat laden with Oranges and Lemmons, of a Stranger Denizen named Domingo Bilota; and for the same Contract they impleaded the said Domingo in Southwark, in the Admirall Court there, *coram Will. Cooke Legum Doctore*, Deputy or Lieutenant of the Admirall. And for this cause Domingo brought an Action of the Case in London and Surrey against Poyntell only; and the Writ was brought upon the afore recited Statutes of 13 Ric. II. and 2 Hen. IV. *ad respondendum tam Domino Regi & Domine Reginae, quam Domingoni Bilota*; reciting the Statutes. And in the Conclusion of the Reherfall, he saith, *Quod talis Prosecutor in Curia Admiralli incurreret Pœnam erga Dominum Regem & Dominam Reginam nunc decem librarum*; and declares accordingly against Poyntell only, & *insimul cum predicto Reynolds persecutus est & implacitavit scilicet singulariter*. And upon this Writ and Declaration the Defendant demurred in Law.

And one Point was, whither the Action brought by the King and Party grieved be good or not; and for this Point see Presidents according, *viz. Hill, 6 Hen. VI. rot. 303. and M. 30 Hen. VI. rot. 313. And in Anno 1 Eliz. in Banco Regis per Swanton, qui tam pro Regina quam pro seipso sequebatur versus Willet, &c.* And note, that in all Presidents the three Statutes before expressed were recyted, and in all the Presidents the Effect of the Surmise of the Libell in the Admiral Courte was touched, as if the Cause had begun upon the high Sea, *& infra jurisdictionem Admiralitatis, ubi revera facta (si qua fuerat) fuit in tali loco infra corpus Comit. D. & non super altum Mare*. Also in the Judgment the Costes of Suit of the Action upon the Case were doubled, as well as the Damages. *Qu. nota.* And the Judgment in the first President was, *Quod querens recuperet dampnum, &c. Et idem defendens predictam pœnam de 10l. erga Regem per Statutum predictum incurrat & capiat*. The second Judgment was, *Quod Dominus Rex recuperet versus Defendentem pœnam 10l. & Defendens capiat*. And note, that the first President was, that the Action was brought in Bristowe, where the Citation and Attachment of the Admiral Court (which was holden in Southwark) were served upon the now Plaintiff. So note, that the Action lieth both in the one County and the other. Also the last President was, that two were impleaded in the Admiral Courte, and they joined in an Action upon the Case. And in the President in the King's Bench it appeareth, that the Suite and Libell was against two, and one onely brought the Action, without shewing the Death of his Companion.

So note, that this last President was in Anno Domina Regina Elizabethæ, pro Domino Riche inter Swant. qui tam pro Reg. quam pro seipso sequeb. &c. against Gillet. And the chief Point of the Case before was, whether the Action brought against Poyntell only, should not have been against him and Reynolds.

And it depended upon this matter, *viz.* whether the Suite and Vexation by two be not several in it self, and in election of the Party, or he may sue them both together in an Action, or have several Suites against them. For it seemeth that this Attempt *contra prohibitionem Actus* was *malum prohibitum*, and a Crime and Contempt against the Crown, and therein every one of them are Principals. *Ideo bene quære de hoc.*

Also the last Words of the Statute, (*viz.* if he be attainted, or if he be convict) were omitted in the Writ, whereas they are in all the Presidents before said. *Et ideo quære inde*: For some say they are superfluous in the Statute, because of common Reason they are understood. *Vide in Champetty, An. 2. Hen. VI. fol. 33. per hoc, &c.*

Also

Also the manner of the Suite and Vexation in the Admiraltie Courte, that is to say, by Attachement or Citation, is expressed; in which it appeareth, the Contract was made *infra corpus Comitatus, & non super altum Mare*, as the Presidents are.

Also the Act prohibiteth the Admiral and his Deputy, &c. And this Writt and Declaration are *coram Willielmo Coke Legum Doctore, Curie principalis Admiralitatis Locumtenente sive Presidente, &c.* And this cannot be, for the Court hath not any Lieutenant, Deputy or President, no more than a Brother (*Confrere*) may be to an Hospital: 16 Ed. II. & 6 Hen. VII. An Appeal against an Abbot, & *Canonicum ejusdem Monasterii, &c.* is not good. *Ideo quare bene* of this Point; for it should be *coram Admirallo vel ejus Deputato*. Also the Damages of 200*l.* are supposed in the Writ, which is no *forine*, &c. *Dier* 159.

A Man is sued in the Admiralty for a thing done at Sea, whereas in truth it was done at *London*. Upon surmise hereof, in the Chancery or King's Bench, he may have a Prohibition; but otherwise it is in the Common Pleas. *Br. Prohibition* 17. 31 H. VIII.

If the Admiral hold Plea of a thing done in the Body of the County, and not upon the Sea; this is *coram non judice*, and so void. *Comment.* 37. and *Brooke, Judgment* 123. 19 E. IV. 8. But it seemeth, saith *Brooke*, that this ought to appear in the Records, *viz.* that it is in the Body of the County. And he saith further, that an Action of Trespass lieth, if Execution be done thereupon. *Bro. ibid.*

If the Admiral, or his Deputy, meddle in his Courte with a thing that belongeth unto the Courte of the King, he shall be in case of *Premunire*. *Lib. Jul.* 24. numero 43. H. 7. Rot. 32. *Action la, &c.*

Of the Shore and Soyle of the Sea.

EST autem Littus (saith *Justinian*) *Maris quatenus hybernus fluctus maximus excurrat.* "It is the Shore of the Sea, saith *Justinian*, as far as the greatest Winter Tyde doth flow." And he saith also, that the Use thereof is publick by the Law of all Nations; and that therefore it is free for every Man to make a Cottage or Cabyn there to harbour in, as also to dry Netts, and to draw them out of the Sea: For, saith he, *Proprietas ejus potest intelligi nullius esse, sed ejusdem juris esse cujus & Mare, & quae subjacet mari terra & arena.* He saith also, that *Lapilli & Gemmae*, and what other things are found upon the Shore, are by and by the Finder's by the Law of Nature.

But the Customes and Law of *England* seemeth to have broken the generality of these Laws; for the Soyle of the Shore and Sea adjoining, is now the King's, and particular Lords, according to their Titles: Insomuch that it is ordinary to take Toll and Custom for Anchorage, Groundage, &c. And some Lords do lett the stony Places near the Sea to Island Merchants to dry their Fish.

The King of *Denmark*, as I hear, claimeth all the Amber found upon his Coast: and it is said to be Felony for any there to take it, but appointed Officers.

R. de Monte Alto in transgression against diverse for taking Wreck of Sea at *Hunston, &c.* declared *super solam suam* Ed. 1. 13. in the Chamberlayn's Custody of the Exchequer.

Of Rivers.

ALL Rivers and Havens (saith the Text of the Civil Law) are publick; and therefore the Right of Fishing in Ryvers and Havens is common to all Men. The Banks of Ryvers, as touching their Use, are also publick by the Law of Nations, as well as of the River it self: Therefore it is lawful for any Man to rest his Ship upon them, to tye Ropes to the Trees there growing, and to lay any Burden there, as well as to sayle upon the River it selfe. But the Property thereof is theirs that have the Ground adjoining; and for that cause the Trees their growing are theirs also. *Instit. Tit. De rerum divis. §. Flumina.*

This seemeth to have been the ancient Civil Law, or rather the Law of Nations, and confirmed rather by *Justinian* then created. *Herodian* witnesseth, that Tyrants had of auncient time Tolls and Impositions upon the Banks of Rivers, the Gates of Citties and Passages; but he saith the Emperor *Pertinax* released them. Afterward both these, and many other such, sprang up under covetous Princes, and were again by *Charles* the Great abolished, as also the Toll for passing under Bridges, and sailing down the midst of Rivers, without resting upon the Banks.

Against all this it seemeth notwithstanding, that the Civil Law admitteth Prescription: for not only the Cities in *Lombardy*, but by little and little of all *Italy*, yea and *Venice* her self, by auncient Prescription exact Custome, Tolls and Tribute upon Rivers: So that at this day Rivers by the Civil Lawyers are common to be divided into two Parts, *Regalia* and *Bannalia*.

Regalia are those where the King receiveth the Profit in right of his Crown, and appointeth the Time and Manner of Fything, with proper Magistrates to be Governors thereof. Such in *France* be the Rivers of *Araxis*, *Rhodan*, *Garumna*, *Loyer*. *Paulus Jovius* saith, they are called *Regalia*, not only because the Prince receiveth the Profit, but also for that he taketh upon him the Care and Oversight thereof.

Quere, Whether we have any of this kind in *England*.

Bannalia (which the Learned called *Proscripta*) are those Rivers that the Lords of the Soyle adjoining have gained, either by Prescription, or by the Grant of the King, or by some other just Title. These are very risse in all Places.

Though it be very lawfull for all Men in navigable Rivers to take Water, (for the Use thereof is publique;) yet may no Man draw it forth by Drains or Conduits, lest the River should become drie, or too shallow for Navigation. Neither avayleth Custome, and long Prescription, in this case, to the hurte of a Cittie, Towne, or Commonwealth, as *Choppin* affirmeth. *Themistocles* being Overseer of the Waters of *Athens*, punished Offenders in this point, and in memory thereof dedicated the Image of a Virgin Aquary. In like sort at *Rome* did *M. Porcius Cato* and *P. Valerius Flaccus*, the Censors, take away all the publick Water of Fountains, Conduits, and publick Rivers, which flowed into any private Man's House or Grounds, causing all things that were built for that purpose in any publique Place to be pulled down within 30 Days. Upon this ground the Emperor *Constantine* made this Law: "That if any being a private Man shall obtain Priviledge of Water by the Prince's Charter, he shall enjoy it no longer than while it is not hurtfull to publique Commodity. *L. 10. de Aquæductu, Lib. 10. Cod.*

But let us see how far the Admirall's Authority stretcheth into Rivers. The Statute of 13 Ric. II. seemeth not to give him Jurisdiction any where, save only at Sea, unless the Reference to the Use of the Time of *Edward* the first enlarge it.

But

But 15 Ric. II. cap. 3. maketh it clear, that of the Death of a Man, and of Mayhnes done in great Ships hovering in the main Streames of great Rivers only, beneath the Bridges, to Seaward, the Admirall shall have cognizance; and to arrest Shippes in great Flotes for the great Viage of the King and his Realme. Saving, &c.

Quere, Whether this Statute shall be construed to extend to Bridges made after it.

It seemeth the Authority of the Admirall spreadeth now farther in Ryvers than it did by this Statute; for at that time he had no other Authority given him by his Patent, than what passed by the very Graunt of the Office, and was left to seek what that was out of the Usage of former time, as namely, of Edward II. and out of the Meaning of the new Statute of Richard II. Whereas at this day, besides whatsoever passeth by Graunt of the Office, he hath new Words of Enlargement in his Commission, to deal in all Causes, as well in Ryvers as at Sea, whether they be fresh or Salt, so as it ebb and flow there, and be underneath the first Bridges to Seaward.

Of the Place accidentally subject to the Admiralty.

THE Place accidentally subject to the Admiralty is the Body of the Realm, and of every County; for though the Statute restrayneth the Admirall, that he shall not hold plea of a thing rising in the Body of the Counties, yet it restraineth him not to make execution upon the Lands, and therefore he may take the Body in execution upon the Land: and so also may he do the Goods by the opinion of the Court. *Brook Admiral*, 19 H. VI. 7. And it is said, that at that time the Use was for the Admirall Officers to serve their Citations upon the Land; and great reason, for otherwise their Jurisdiction were to little purpose.

Upon this reason also is the High Court of Admiralty by auncient Use holden in the Body of the County, and so also may the inferior Courts; though the Judges many times use to hold them under the full Sea-mark: But Discretion requires they should be in maritime Towns, for the Conveniency of the Busines, and Ease of the Sutors.

This also I take to be the Cause, that the Lord Admiralls of *England*, in the Patents to their Vice-Admiralls, use to graunt them that Office, as well in upland Countys adjoining, as maritime, that they might have Power to hold Courts, and award Process ~~thither~~, if need require. So the Vice-Admirall of *Norfolk* is usually Vice-Admirall of the City of *Norwich*, &c.

Here ends, abruptly, this Treatise of Sir H. Spelman's in my Copy, but the following Table of Fees was in the same Parcell, in a loose Half-Sheet.

The

*The Fees which are taken in the Admirall Courte
at London.*

Pro originali Warranto	v ^s vii ^d .
Pro executione ejusdem	ii ^s vi ^d .
Pro quolibet Decreto sub Sigillo	vii ^s vi ^d .
Pro cerio cujuslibet Warranti	xvi ^d .
Pro cerio cujuslibet Decreti	xvi ^d .
Pro examinatione cujuslibet Partis principalis	xviii ^d .
Pro copia cujuslibet Responsionis personalis	xii ^d .
Pro copia cujuslibet Libelli five Allegationis dat. juxta longitudinem ejusdem	
Pro quolibet Actu in Curia expedito	viii ^d .
Pro quolibet Actu extra Curiam	xvi ^d .
Pro Examinatione cujuslibet primi Testis super Libello	ii ^s .
Pro Examinatione cujuslibet alterius Testis	xii ^d .
Pro Copiis Depositionum cujuslibet Testis	xii ^d .
Pro Feodo cujuslibet Commissionis five pro Examinatione Partium principalium five Testium	xx ^s .
Pro Feodo cujuslibet Sententiae	xxxiii ^s iiii ^d .
Pro Feodo cujuslibet primi Decreti	xiii ^s iiii ^d .
Pro Appeciatione cujuslibet Navis	vi ^s viii ^d .
Pro Relaxatione Navis aut Bonorum ab Arresto	ii ^s vi ^d .
Pro qualibet cautione dat. de respondendo Actioni	ii ^s vi ^d .
Pro Examinatione cujuslibet Testis super Interrogatoriis ministratis	ii ^d .
Pro Feodo Judicis pro Admissione dictorum Interrogatoriorum	xii ^d .

Temp. mei, H. SPELMAN.



DEEDS and CHARTERS

by exciting the children and kindred, as out of picture to confirm their-
dies and Angustia's Graces. After in like manner to I say before.

to compare the same

After the Commonwealth of the Jews was erected, and the Lands of every Tribe so entailed upon their Families, as they might not otherwise be sold then to be redeemed at or before the next Jubilee (Lev. xxv. 13.) it became a matter of Necessity to have the Sale put in Writing, that when the Witneses were dead and gone, or had forgotten the manner of the Contract it might by the Writting appear for how long it was sold, upon what Condition of Redemption, and to what Tribe and Family it was to revert. So *Jeremias* bought the Field of *Hanameel* by Writting sealed, according to the Custome of their Law, with the common Seal, and Copies thereof delivered to the Parties, containing the particular manner of the Sale, with the Price and Name of the Witneses.

From these two Precedents our *Saxon* Aunccestors derive their manner of Conveyances: For where they sold or gave Land absolutely, they did it usually without Deed, as that of *Abraham*; but where they gave it in a special manner, as with a Limitation of Time, Heires, or how it should be employed, there they did it by Writing, as that of *Jeremiah's*. From this Use of theirs, the Lands of that time became divided into two sorts, whereof those without Wrighting were called *Folkland*, either for that the assurance of them rested in the Testimony of the *Folke* or People, or for that they might be alienated to all *Folke*, without any Impediment. The other in Wrighting were called *Bokeland*, for that they were no way disposable but according to the Tenor of the Wrighting, which they called a *Bake* or *Landboke*, after the Phrase of the *Jewes*, who called it the *Possession-boke*. *Jer. xxxii. 6.*

This Division appeareth in the Lawes of *Edward* the Elder, *Cap. 3* where he saith, *æþon oþþe on bocland oþþe on folcland. They that have Land, whether it be Bokeland or Folcland, &c.* And this *Folcland* seemeth to be the same amongst our *Saxons*, which their Brethren the *Goths* and *Longobardes* in the Feodal Law call *Allodium*; for *leo* in *Saxon* signifieth the same that *Folk* doth, *viz.* the People.

The nature of *Bokeland* I cannot better declare, then appears by the
Laws of *Mured.* cap. 37. Se mon re de bogland hebbe, &c. "We ord-
daine, that he that hath Bokeland left him by his Ancestors, shall not
" lie

“lien it from his Kindred; especially if it can be proved before the King, or the Bishop, either by Wrighting or Witness, that he which first gave it did so dispose it.” And it was then otherwise called *Terra hereditaria*, heritable Land, for that it might not be put from the Heir. So that *Folkland* and *Bokeland* amongst the Saxons were much of the nature of *Allodium* and *Feudum* amongst the Feudists.

But as nothing continueth stable under the Sun, so in progression of Ages this *Bokeland* or heritable Land began by little and little to be aliened by the Fathers, first to Churches and religious Houses by consent of the next Heir, as appeareth by the Deed of *Thorold* of *Bukenbale*, in *Ingulf*; then by exciting the Children and Kinsmen, as out of pietie, to confirm their Fathers and Auncestors Grants. After, in like manner, to Lay Persons; so that it grew at last a matter of course for Children, as *heredes proximi*, for Kinsmen as *heredes remotiores*, and then the Lord himself as *heres ultimus*, to confirm the same.

And this is the cause why, that in the Times near the Conquest you shall see so many severall Persons, by their severall Deeds in severall Ages, grant and confirm one and the same thing; which being once come to be matter of course, it grew presently to be Law. That the Father, without the consent of his Heirs, might by his Deed give part of his heritable Land either to religious Uses, or in Marriage with his Daughter, or in recompence of Service, as appeareth by *Glarvile*, lib. 7. cap. 1. But by Will he could not, least the Passion of Sicknes might make him too careless of his Heir, whom the Law then so much respected, that from thence it grew (as I take it) that Lands were not devisable by the Common Law. And it seemeth, that I take it right; for in *Glarvill*'s time (which is *Henry* the Second's) a Man might devise Land with consent of his Heir. *Ibidem* §. in extremis, in fine.

The Saxons, in their Deeds, observed no set Forme, but used honest and perspicuous Words to expresse the thing intended with all brevity, yet not wanting the essential Parts of a Deed; as the Names of the Donor and Donee, the Consideration, the Certainty of the thing given, the Limitation of the Estate, the Reservation, if any were, and the Names of the Witnesses, which always were many, some for the one part, and some for the other. And though the Deeds of their time, which we find in Abbey-books, are generally *Latin*; yet are most of them translated from the Saxon by religious Men: For they ordinarily did use their Vulgar, as appeareth from the *Insperimus* of many auncient Charters, and by diverse Originals themselves at this day extant. But Monks and Clergymen affected much the *Latin*, as well to make themselves the more remarkable for their Learning, as to expresse Works of Sanctity in a sanctified Tongue. And therefore also in Donations made to their Churches, they used for the most part long and tedious Preambles to excite the Donor, and advance the Action, with all the Powers of Invention, Wit and Learning, that they could. Their Deeds also made to Churches and religious Uses commonly conteyned in the End of them a bitter Curse denounced by the Donor, and some Bishops that confirmed the same, against all that should at any time pervert the Intent of the Donor, or interrupt the quiet Possession of the thing so given; which perhaps worketh unfortunately in them at this day. And where the King was the Donor, the auncient Deeds did usually recite, that the Gift was made by the Assent of the Peers of the Land; the Law seeming to be then, that the King might not dispose the Lands of his Crown without the assent of the Lords both Ecclesiastical and Temporal. Therefore when *Baldredus* King of *Kent* had without the Assent of his Nobility given the Mannor of *Mallinges* in *Sussex* to *Chriss's Church* in *Canterbury*, the Gift was avoided till King *Egbert* and *Ethelwulf* his Son, by a Generall Councill holden for all *England* at *Kingstone*, about the Year 838, did new grant the same unto them. And hence

it

it seemeth to grow, that so many Peers of the Land always subscribe the Charters of the auncient Kings, not only as Wittnesse, but as consenting to the same, by the Words *consensi, confirmavi, corroboravi, consolidavi, amen dixi*, and such like; every one of them commonly using a several Terme; and adding the Sign of the Crosse ✝ to his Name.

This Use continued also after the Conquest, as appeareth by many Presidents both of the Conqueror himself, and some of his Successors. So when Henry I. gave the Mannor of *Tharpe* to the Church of *Norwiche*; a dozen Bishops, and above twenty Earls and Barons of the Laity, and as many Abbats and other Prelats subscribed the same; adding thereto with their Names the Sign of the Crosse; and I much marvaile that it hath no Cursé annexed.

As for dating, it was not usuall amongst them, save in Writings touching the Church, wherein they followed the Chamber of *Rome*, by Calends, Nones, &c. the Year of the Lorde; and sometyne of the King, Pope and Indiction: Adding now and then the Epact, Dominical Letter, and Number of the Moone, which if it were now observed, would exceedingly prevent or discover the Forgery of many Writings: for that these are hard to find out for Years long since passed.

The Hand wherein they wrote their Deeds, if they were *Latine*, was for the most part the *Roman*, and the elder the fairer; if they were *Saxon*, that Character: And commonly they named the Place where the Writing was dated, and sometimes who wrote it; for every Man might not be a Chancellor, as publique Scriveners were then termed: And whereupon the Word *Cancellare* was used for *Scribere*, according to an old Verse,

Cancello, scribo: Cancello, grammata fudo:

Cancelloque meas in cruce pono manus.

Cancello, is to write, or to deface;

Or like a Crosse, when as our Hands we place.

Seales they used not at all other than (the common Seale of Christianity) the Sign of the Crosse, which they and all Nations following the *Greek* and *Roman* Church accompted the most solemn and inviolable manner of confirming. Therefore, saith *Edgar*, in the foot of his Charter to *Crowland Abbey*, dated *An. 966. Ego Edgarus totius Albionis Monarcha istud chirographum cum signo sancte Crucis confirmavi ✝*. And next him *Dunstane: Ego Dunstanus Archiepiscopus Dorobernens. hoc corroboravi*. *Ingulph. pag. 882.* "I *Edgar*, Monarch of all *Albion*, have confirmed this Deed with the Signe of the holy Crosse ✝ . I *Dunstane*, Archbishop of *Canterbury*, have fortified this Deed with the Signe of the holy Crosse, which we sett up in triumph over our Enemies ✝ . Then the rest of the Bishops and Nobility subscribe in like manner with Cresses. So *Dunstan*, in King *Edgar's* Charter of the Sanctuary at *Westminster*, dated 968. saith, *In nomine Christi Ego Dunstanus (ac si peccator) Dorobernensis Archiepiscopus, hanc libertatem sancte Crucis agalvate consignavi*. "I *Dunstan*, though a Sinner, yet Archbishop of *Canterbury*, have sealed this Liberty or Privilege in the Name of *Christ* with the joyful Sign of the Crosse ✝ ". So in *Stafford's* Case, *Term. Pasch. 1 Hen. VII. fol. 136.* the Abbat of *Abington* produced the Charter of King *Edwyne*, (whereby he granted to the Abbat a Sanctuary at *Culmham*) *non sigillatam, sed cum Crucibus signatam*, as the Booke saith.

So superstitiously did those Times think of the Crosse, that they held all things sanctified that bare the Signe of it; and therefore used it religiously in their Charters, as an Amulet or Preservative against Injuries and evil disposed Persons, according to the old Verse,

Per Crucis hoc signum, fugit hinc procul omne malignum.

And for this cause, after the *Normans* had brought in the common Use of Sealing, yet did they long after retaine the former Custome, and so fortified their Charters both with Crosses and Seales, as was that of *Henry II.* before mentioned, and others which I have seen of *William* the Conqueror, *William Rufus*, *K. Stephen*, &c.

But I must not omit, that some of the *Saxon* Kings, as *Edward* the Confessor, and before him the memorable *Edgar*, used both Crosses and Seales in their Charters; which, as touching *Edward*, is graunted, and thought that he first brought it out of *Normandy*, having been there to visite his Cousen the Conqueror; but the other is absolutely denyed by great Antiquaries; and I will therefore report what I find touching the matter. The same *Edgar*, in his great Charter to the Abbey of *Ramsay*, concludeth thus: *Manus meæ subscriptione hanc Chartulam 5. Kalendas Januarii decrevi roborare; & Sigilli mei impressione communire:* But they on the contrary part expound *Sigilli impressione* to be nothing save the putting to of his Mark, which sometimes indeed is called *Sigillum*, and in the same Sense, a little after, in the same Charter, is so used; where *Alstanus* saith, *Ego Alstanus Rosensis Episcopus consigillavi.* And in *Edgar's* Charter of the Sanctuary at *Westminster*, *Ego Sigarus Almamensis Ecclesiæ Episcopus consigillavi.* But that *Edgar* meant here by *Manus subscriptione* his subscribing it with the Signe of the Cross, and by *Sigilli impressione*, the pointing it with his Seal, is plainly declared in the End of this his Charter we speak of touching the Sanctuary of *Westminster*, when he endeth it thus: *Ut certius credatur, Manus nostræ subscriptione subter eam decrevimus roborare, & de Sigillo nostro jussimus sigillare,* p. 239. b. And the like Words being used in the Charters of *Edward* the Confessor, they have both his Mark of the Cross; and his Seal in Wax with his own Image in it sitting on a Throne, to make the Exposition manifest, which myself have seen upon two severall Seales.

Thus much of Deeds before the Conquest, which at this Day are so rare, as though I have seen diverse, yet could I never obtain one Originall. Copies and Constats there be of them abundantly in Abbey Books, and many extant in printed Authors, as *Ingulph* the *Saxon*, *Malmesbury*.

The Deeds and Charters after the Conquest changed not immediately their antient Form, save only they might be known without opening, by their Seals, which the *Saxon* Deeds, as I have shewed, had not.

In handling them, we will first speak of the Writing contained in them, then of the Seales annexed to them, and lastly, of the Livery of Seisin made upon them, with some other outward Accidents and Ceremonies.

The Writing for a long time was uncertain both for Matter and Forme; for as the Parts thereof had not their Birth altogether, but in sundry Ages, so must the Forme of necessity have sundry Changes accordingly: Leaving therefore the uncertain Presidents of those elder Times, we will propose unto our selves such a Deed, as was commonly in use about the time of *Henry III.* and from thence we will take our Prospect both unto the Deeds before and after, according to the severall Changes.

I observe in the Deeds of that time a very absolute and methodicall Composition, which therefore hath ever since been received, and conteyneth in a manner to this day; consisting upon the Parts here following: 1. The Direction. 2. The Parties. 3. The Consideration. 4. The Words of Grant or Donation. 5. The thing granted. 6. The Estate of the Granter. 7. The *Habendum* or Estate granted. 8. The Use whereto. 9. The Reservation, if any were. 10. The Tenure. 11. The Warranty. 12. The Sealing and Delivery. 13. The Date. 14. The Witnesses. Of all which in order.

Of

C A P. I.

Of the Direction.

THE Directions of Deeds and Charters was so variable, not only through the Variety of Instruments, but of every Man's Fancy, as I can give no Rule of them. Some used none at all, but began: *Ego Godricus concedo Deo & S. Benedicto Ramesie terram meam de Torungetonia. Ram. 151.* And so the Conqueror in his Deed to Crowland, *Ego Willielmus Rex, &c. Ingul. 912.* Many religiously with, *In nomine Dei.* And *In nomine S. & Individuæ Trinitatis;* after the manner of Ecclesiastical Instruments, as did also the Conqueror, *Ram. 173.* But passing them and all others over, I will only note such as minister some particular Observation.

Henricus Rex Angliæ Episcopo Lincolnienſi & Vicecom. & omnibus Baronibus & fidelibus ſuis de Bedefordſhire, ſalutem. Ram. 326. And again, *Henr. Rex Anglorum Episcopo Lincoln. & Justiciis & Vicecom. & Baronibus & fidelibus ſuis, Francis & Anglis de Huntinduneshire, ſalutem. Sciatis me conceſſiſſe, &c. 312.*

This Direction is made to the Bishop, Sheriff, and Barons; being they were the Judges of the County Court, where if any Suit should arise about the thing granted, they might take the better notice of the Deed. But it seemeth; that it is here directed to the Bishop of *Lincoln;* as the King's Justice at that time for those Parts: For the Bishop of the Diocese did not now sit in the County, as in former times, his Consistorie being removed from it; as some write, by *William* the Conqueror; yet appeareth it otherwise by the Laws of *Hen. II. cap. 32.* where it is commanded, that Bishops, Earls; and Church Prelates be present at the County, and that they determine the Laws of God and worldly Affairs with due consideration. *H. I. in Ramsf. booke §. 224.* *Henricus Rex Angl. Episcopo de Ely & Baronibus & Justiciis & Vicec. & Ministris de Cantebriſchire, ſalutem. Sciatis, &c. The like also ſect. 212.*

Also the Word Barons here is to be understood for the Lords of Manors, who in those Days were commonly so called; and to this day their Jurisdiction doth testify as much, it being still named *Curia Baronis*, or the Court of the Baron. The Barons of the County (saith the Law of *Hen. I. cap. 30.*) which have free Land in it, are the King's Judges, by whom every Man's Cause is to be determin'd. And by this appeareth, that Barons then did also signifie them whom we now call Freeholders: for at this day they are the Judges there; and so I take it in that which followeth in the Writ of *Hen. I.* beforementioned: *Sciatis quoniam coram me testificatum & recognitum est per Barones de Honore Ramesie, quod, &c.* And I find Deeds of *H. II.* directed in like manner *omnibus Baronibus & fidelibus ſuis*, but now without mention of the Bishop, as being thereby severed from the County. And it is to be noted, that the Word (*ſuis*) here is not to be referred to *Baronibus*, but only to *fidelibus*; for if it were *Baronibus ſuis*, then should it intend none save the King and Barons, which are the Peers of the Realm, and not the County-Barons.

And as the King directeth his Deed to those that were to be Judges of Controversies touching the same, so also did private Lords of Manors direct their Deeds to their Tenants and Freeholders, that were to judge matters

ters touching the Fee of their Manor, using the like Style, *Omnibus hominibus & fidelibus suis*: for *Baro* and *Homo* are all one, signifying the same that *Vir* doth, a *Man*. And here by translation a Vassale or Tenant that ho'deth by Homage or Man-service; as *Fideles* likewise signifieth such Tenants as hold only *per Fidelitatem*, and not *per Homagium* vel *Hominium*. Lib. Ramf. sect. 246. *Reinaldus Abbas Ramesiensis omnibus fidelibus, Clericis & Laicis, qui tenent de territorio S. Benedicti Ramesiensis Cænobii, salutem, &c. Sciatis, &c.* These Vassals or Tenants, in old time, were to the Lord like his Eyes and his Ears, to take knowledge, and give him information and direction in all things touching his See and Reputation, and particularly of all Alienations made within the Manor, which accordingly at this Day they are bound to present at every Court holden for the Manor; and therefore the reason is manifest why the Lords should then use this Direction. Yet do I not remember that I have seen it in any Deeds since the time of *Henry III.* or so late.

In use
temp.
Hen. III.
Lib. Ra-
mes. 206.

Another of those old Directions is, *Omnibus Hominibus, or Fidelibus, & Amicis suis, tam Francis & Anglis*: Which Phrase was rise during the *Norman Kings*, and was not wholly laid down till . . . the *French King* had seized the Duchy of *Normandy*, and the other Territories that King *John* had in *France*, for the Felony committed by him in murdering his Nephew *Arthur Duke of Britaine*, as he alledged.

Others about the time of *Henry the . . .* used more general Directions, as *Sciant presentes & futuri*, which hath ever since been received; and of late time, *Omnibus Christi fidelibus*, following therein the Example of the Church, whose Phrase hath always almost constantly been, *Universis sanctæ Ecclesiæ fidelibus*, or *Omnibus sanctæ matris Ecclesiæ filiis*.

But I must not let pass, that some both before and after the Conquest directed their Deeds to the King himself. *Ram. sect. 143. Ego Arnketel & Wlfrun uxor mea, Ethelredo Regi Domino nostro & omnibus suis de Eboraco & de Nottingham, notum facimus, Nos concessisse, &c.* So after the Conquest, *sect. 381. Theobaldus Dei gratia Cantuariæ Archiepiscopus Regi Angliæ, Archiepiscopis, Episcopis, Abbatibus, Comitibus, Baronibus, Justiciis, Ministriis, & omnibus sanctæ Ecclesiæ fidelibus, salutem, &c.*

C A P. II.

Of the Parties.

Touching the Parties unto Deeds and Charters, we are to consider who they were; how they stiled themselves, and of whence, as well the Donors and Grantors, as the Donees and Grantees.

It is impossible that a Grant should be without a Grantor: But I have seen a Grant made indefinitely, without mention of a Grantee; as that in *Malmesbury* of *Ethelbaldus King of Mercia* about the Year 747. where he saith, *Quapropter Ego Ethelbaldus Merciorum Rex concedo, ut omnia Monasteria & Ecclesiæ regni mei à publicis vectigalibus & operibus & oneribus absolvantur, &c.* Here there is no mention of a Grantee; yet the honest Construction of that time conceived the Deed to be good, and to inure to the whole Clergy.

So also was it ordinary in those Days, and many Ages after, to make Grants to Persons intellectual and invisible, as God himself, to the Blessed Trinity,

Trinity, to the Church, to the Apostles, the Saints, and holy Men, that have been dead long before.

The Charter of *Ethelbaldus* last abovementioned may be understood to be made to God himself; but the sacred Charter of the *English Liberties*, which we call *Magna Charta*, first granted by King *John*, and after by *Henry III.* is begun by both of them. *Concessimus Deo, & hac presenti Charta nostra confirmavimus, pro Nobis & heredibus nostris, imperpetuum, quod Ecclesia Anglicana libera sit, &c.*

To a Church simply: *Lib. Ramesf. sect. 44. 32. & 127. Ego Ethelunga Comitissa concedo Ecclesie Ramesf. ad honorem Dei & S. Benedicti.* And the Charter of *Hardecnut*, sect. 87. So likewise, *Ecclesie S. Trinitatis London. sect. 256.* And in the Books of *Worcester*, fol. 52. *Ego Ceolfredus Abbas dono terram meam & hereditatem patris mei Cyneberthi ad Ecclesiam Beati Petri Apostoli, & ad Sedem Episcopalem in Wigornun-Cestre, &c.*

To God and Saints: *Lib. Ramsf. 143. 132. Ego Arnketel, &c. concedo Deo, S. Mariae, & S. Benedicti. &c.* And, *Charta Beorredi in Ingulph. Anno 860. Deo & S. Guthlaco.* And, *Lib. Ramesf. sect. 3. 129. 135. 151. Deo & S. Benedicto Ramesie.*

To Saints alone: *S. Benedicto Ramesie, sect. 343. and S. Benedicto & suis Monachis, sect. 158.*

But after the time of *Henry III.* God's Omnipotency was in point of Law disabled to purchase, or to take by Graunt, &c. And so also was the Spouse the Church: For the Law thinks it no reason, that the Wife should be in a better condition than her Husband.

And the whole Army of Saints were likewise disabled.

Let's come therefore to others that had capacity, and consider of them, their Stiles and Additions, according to their times.

The first were the Kings of the Land, whose Stile altered according to their Dominions. In the Heptarchy, or time of the seven Kingdoms, every King had the Stile of his Territory; *Rex Cantii, Rex Orientalium Anglorum, Rex Merciorum, &c.* But when *Egbert*, Anno 800. had drawn all the Kingdoms into his own hand, then he and his Successors took the Stile of *Reges Anglorum.*

Eldred, in the Year 948. stiled himself, *Rex Magnae Britanniae. Ingulph. Ethelstan II.* sometimes, *Rex Anglorum*, and sometimes (if my Memory fail not) *Albionis, or Britanniae.*

Edgar, in one of his Charters to *Croyland*, *Possidens totius Magnae Britanniae Monarchiam.* In another, *Totius Albionis Monarcha.* In a third, *Praesidens Regno Magnae Britanniae:* And in the Teste thereof, *Totius Albionis Basileus.* And so likewise in his Charter to *Malmesbury*, in *Malmesb. with, Necnon maritimarum seu insularum Regum circumhabitantium.* And many such in *Ramsfey Charter, totius Anglorum solio sublimatus.* And in his Epitaph at *Glastenbury* he was entituled, *Anglici Orbis Basileus.*

Canutus or *Cnut*, *Rex totius Angliae, & Danamarchiae, & Norwegiae, & partis Svecorum. Malm. 74.*

Edward the First afore the Conquest, was termed *Edwardus senior;* the second, *Edwardus Martyr,* and *St. Edward the Martyr;* the third, *Edwardus Confessor.*

Thus much for the Stile of the Kings before the Conquest; now of them after.

William the Conqueror commonly, as in Matters of less importance, sometimes *Rex Angliae,* and sometimes *Rex Anglorum.* But in solempne Charters, *Rex Anglorum, Dux Normannorum, atque Princeps Canomannorum.*

William

William Rufus nothing but *Rex Anglorum*; for *Normandy* and *Guennania* in *France* were given to *Robert*, his elder Brother, who had need over Henry I. also the same Title: For though both he and his Brother occupied by Arms the Duchies of *Normandie* and *Carthmania*, having taken their Brother Duke *Robert* Prisoner, yet they usurped not his Title, than I can find. In many Records he is called *Henry the Elden* aged 21. III. years.

Stephen only the same Title also: For though *Robert* were now dead without Issue, yet *Geffery* Earl of *Anjou*, in the Right of *Maud* (the Empress) his Wife, being Daughter and Heir to *Henry I.* held and enjoyed *Normandy* and *Carthmania*.

Maud the Empress no more but *Anglorum Dominatrix*. And therefore the Charters and Creations that were made by her were holden void, and new taken from her Son *Henry II.* when he came to the Crown.

Henry II. before he was established, was stiled, *Henricus filius filie Regis Henrici, verus heres Anglie & Normannie*. And another while, as *Matthew Paris* reporteth, pag. 82. *Dux Normannorum & Aquitanorum, Comes Pictaviensis & Andegaviensis*; but this Stile seemeth to be before King *Stephen* and he were accorded, the other after. Having attained the Crown, he then wrote, *Henricus Rex Anglie, Dux Normannie & Aquitannie, Comes Andegavia*.

Richard I. as his Father, *Ricardus Rex Anglie, Dux Normannie & Aquitannie, Comes Andegavia*.

John, at the first Entrance of his Kingdom, added *Ireland* to his Stile, which neither his Brother *Richard* nor his Father (under whom it was conquered) had done. *Johannes Dei gratia Rex Anglie, Dominus Hibernie, Dux Normannie & Aquitannie, & Comes Andegavia*.

Henry III. the same Stile, as you may see in *Magna Charta*, in the *Index*.

Edward I. leaving out both *Normandy* and *Anjou* (because, as I think, the French King had seized and held them for the Murder of *Arthur* Duke of *Britane*, which he imputed to King *John*) framed his Stile, *Edwardus Dei gratia Rex Anglie, Dominus Hibernie & Dux Aquitannie*, as appeareth in his Confirmation of *Magna Charta*. He used also another Stile in other Instruments.

Edward II. the same Stile of *Rex Anglie, Dominus Hibernie, Dux Aquitannie*. This is the King that is ordinarily written, *Edwardus filius Edwardi*.

Edward III. used his Father's Stile till the fourteenth Year of his Reign, and then, as King of *France* by his Mother's Inheritance, he wrote, *Rex Anglie & Francie & Dominus Hibernie*, leaving out *Aquitain*, as drowned in *France*.

Richard II. as *Edward III.*

Henry IV. before he attained the Crown, wrote himself, *Rex Castellie & Leonis, Dux Lancastrie*. but after as *Edw. III.*

Henry V. till the ninth Year of his Reign, wrote so also, *Rex Anglie & Francie, Dominus Hibernie*: But then marrying *Catharine* the Daughter of *Charles* the French King, and for composing the long Wars between the two Nations about the Crown, he was by the same *Charles*, and most of the Peers of *France*, designed Heir and Successor of the Crown of *France*; and thereupon leaving the Title of King of *France*, he then wrote for the time he lived, *Rex Anglie, Heres & Regens Francie*; touching all which there was an Act of Parliament here in the ninth of his Reign.

Henry VI. being in his Infancy crowned King in *France*, resumed the antient Stile of his Father and Grandfather, continuing the same forty Years, and then expelled by *Edward IV.* and recovering it again, dated his Writings

tings as well by his Reign as his Recovery, viz. *Anno regni Anglia & Francia, &c. 40. readeptionis vero primo or secundo.*

Edward IV. Edward V. Richard III. and Henry VII. the same Stile, *Rex Anglia & Francia, Dominus Hibernia.*

Henry VIII. so likewise in the Beginning of his Reign, *Rex Angl. & Franc. Dominus Hibernia*; but after, viz. *Anno regni* . . . he changed his Stile of *Dominus Hibernia* into *Rex Hibernia*; and about the twenty second Year received from Pope Clement the Title of *Defender of the Faith* (which Leo X. had before ordeined to him for his Book against Luther) and at first placed it before *Dominus Hibernia*, but afterwards set it behind *Rex Hibernia*, viz. *Anno Regni* . . . And at last (having cast out the Pope) was in the 35th Year of his Reign, by a Statute then, cap. 3. stiled, *Rex Anglia, Francia & Hibernia, fidei Defensor; & in terra Ecclesie Anglicanae & Hibernia supremum capud.*

Edward VI. retained the same Stile.

Queen Mary, an. 1. wrote her self also *Supremum capud Ecclesie*; but in her second Year, and first of Philip, by a Statute, cap. 8. that of Henry VIII. was abrogated, and then her Stile and her Husband's thus mingled: *Philippus & Maria Dei gratia Anglia, Francia, Neapolis, Hierusalem & Hibernia Rex & Regina, Fidei Defensores, Principes Hispaniarum ac Sicilia, Archiduces Austria, Duces Mediolan. Burgundia & Brabantia, Comites Hasburgia Flandria & Tirolis.* Afterward, viz. An. . . . they were stiled King and Queen of Spain, &c.

Queen Elizabeth resorted again to the Stile of her Brother and Father.

King James in England and Ireland is stiled, *Rex Anglia, Scotia, Francia & Hibernia, Fidei Defensor, &c.* but in Scotland, *Rex Scotia, Anglia & Hibernia, Fidei Defensor.* But to foreign Princes, by an Edict, *An. regni . . . Rex Magna Britannia, Francia & Hibernia, Fidei Defensor, &c.*

Thus much of the Stile of the Kings, now of Titles and Additions of Subjects.

Before the Conquest, many amongst the Saxons wrote themselves in Latin *Duces*, and in their English *Hertogens*, according to the German Word, which signifieth Dukes, and they were such as were Lords or Earles of diverse Counties, whom therefore many Authors called indifferently as well Earles as Dukes. So is William the Conqueror by Malmesbury termed *Earl of Normandy*, and not Duke. After the Conquest none are named Dukes, till Edward III. about the tenth Year of his Reign, *An. Dom. 1336.* first created Edward his eldest Son Duke of Cornwall, then Lionel his Son Duke of Clarence, and in the . . . Year of his Reign, his fourth Son, John of Gaunt, Duke of Lancaster.

The first Marquess was John de Beaufort, Son of John of Gaunt, and Earl of Somerset, whom Richard II. in the twenty first Year of his Reign, made Marquess of Dorset.

And the first and last Woman that was created a Marquess, was the Lady Ann Boleyn, Hen. VIII. as now also the Lady Buckingham the first and last Countess.

Earles were of long continuance before the Conquest, yet in these old Times not a Name of Dignity, but of Office and Government in their Countreys. In their antient Deeds since the Conquest, they wrote briefly in this manner: *Sciant presentes & futuri, quod ego Rogerus Bigot Comes Norff. &c.*

No *Vicount*, till Henry VI. made *John Lord Beaumont* *Vicount Beaumont*, as my Lord *Cooke* and others affirm; yet am I deceived, if I have not met with that as a Title of Dignity much nearer the Conquest.

Barons in the time of the Saxons were called *Thain* and *Minister Regis*, and often time in Saxon Deeds they so stiled themselves, *Ego N. Minister Regis*, as appears in *Ingulphus*. But I find no Deed where any writeth himself *Baro*, till now of late. Near the Time of the Conquest they used no Additions at all, but wrote simply thus: *Sciant presentes & futuri, quod Ego*.

About or somewhat before Henry III. they began to write themselves Lords of their Castles or chief Seat; as, *Sciant presentes & futuri, quod Ego Dominus Johannes Le Strange, Dominus de Knokyn*: Where *Dominus* in the first place signifieth *Sir*, and in the second place *Lord* or *Baron*. Yet have I seen very many Deeds, where such as were no Peers of the Land wrote also in the same manner: So that it is very hard to distinguish their Dignities by this Stile before the time of *Edw.*

Some, but very rare, are stiled *Vicedomini*, that is, *Vidames*. So I find the Lord *Scales*, in a Deed of his dated in *Manerio nostro de Middleton* (as the Words there be) 13^o. *die mensis Sept. an. regni Regis Hen. VI. post Conquest. 24. viz. Omnibus Christi fidelibus, ad quos presens scriptum pervenerit, Thomas Dominus de Scales & de Nucalls, Vidame de Charteres & Senescallus de Normandy, salutem.* I find it also in the *Teste* of a Charter of our Saxon King *Edred*, who stiled himself King of Great Briton, *An. 948. Ego Binguiph Vicedominus consului, Ingul. 876.* And before that in the Deed of *Bertulph* King of Mercia, *An. . .* where he saith, *Confirmo etiam de dono Thoroldi Vicedomini Lincolnienf. 2 carucatas, &c. pag. 86r.*

This Stile is unknown to us of England; yet because I fall upon it in a Deed of England, I will open what a *Vidame* is. The Councells, or Canon Law, ordeyned of old, that Bishops, for Administration of Matters concerning their Temporalities, should have Substitutes or *Vicario's*, whom they named thereupon *Vicedomino's*, and in French, *Vidames* or *Vidomes*. These under the Bishop were as the Sheriff or *Vicecomes* was under the Earle or *Comes*: And as in Cumberland, and many places of Scotland, the Sheriffs obtained their Office in Fee of the Gift of the King or Earl of the County having such Power; so these Officers obteyned likewise of their Lords the Bishops to have the Office of Vidameship in Fee, and thereby brought it from an Officer to a Dignity, but holden and depending upon some Bishoprick.

Knights, till of late, were always stiled *Domini*, as were also Priests and Clergymen, and so still are both in the Courts Ecclesiastical: But for Knights, it was added before the Christian Name, for Barons commonly before the Surname.

Under the Degree of Knights none of any Rank used any Addition, were he never so great, till that about Edward the III's time some now and then wrote themselves *Armigeros*, Esquires; and afterwards, perhaps, some *Serjeants at Law*. But when the Statute of 1 Hen. 5. cap. 5. had ordeined, that in Writs of *Exigent* and *Outlary* mention should be made of the Estate, Degree and Craft of the Partie, and where he dwelleth. Then grew their Additions to creep also into Deeds and Charters; so that by Henry VI's time, it was grown usuall. Yet did no Man take it up, save the Sonns and Heires of Knights, and some militarie Men, to whose profession it was incident; and some Officers in Courts and elsewhere, who by Patent or Prescription obtained that Addition. One of the greatest Lawyers in a County did not then assume it, being Recorder of *Norwich*, and Lord of six or seven Manors or Towns. When I came first to *Lincolns-Inn*, it was only permitted

ted to Benchers, and some prime Men next unto them. Now, since the coming of King James, every mean Yeoman's Son, tho' he wanteth both Learning and Civility, as soon as he is called to the Barre, writes himself presently Esquier; which I marvel that the Benchers should suffer, tending so much to the vilefying of their own Title.

Gentleman, which in nature above all other is most honourable, and that glorifieth the greatest Degrees of Nobility, is now thrust down to be lowest of them all; and therefore taken up at pleasure by every Bore and Peasant of the Country, as his own Spirit pleaseth to direct him. In Edward IV's time it was attributed to none but Men of principal Respect in their Country, and seemeth at first to have holden that Rank amongst Gown-men, that Esquiers did amongst Military. Their Title came first into ordinary use about Edward IV's tyme, or by little and little from the aforesaid Statute of 1 Hen. V.

Yeoman in like manner began also to be used, yet nothing commonly till after Hen. VIII.

As for Aldermen, Citizens and Burgeses, I know not how to rank them in their places; but I have seen an Alderman's Fellow rather affect to be written Gentleman, than by the Stile of his Mistry, Citizen of London.

Let me add one thing more worth the remembring, that is, *Knave*; in Henry VI's time, was used for an Addition, as appeareth in the Records. Original. de An. 22. Hen. VI. Rot. 36. Derby. *Johannes filius Willielmi Couper de Denby, Knave, ad satisfaciendum Regi de eo quod ad Regem pertinet, occasione cujusdam Utlagaria in ipsum in placito transgr. ad sectam Regis promulgata 22 Maii.*

Addition of the Dwelling-place, as of the County, Town or Hamlet, tooke his mayne root from the said Statute, though now and then we find . . sometimes, but very rarely, before; and then perhaps upon some particular occasion; and in that manner I have also sometimes light upon it in a Saxon Deed.

C A P. III.

Of the Consideration.

IN old Deeds the commonly either for *Money* or *Service* . . . times none at all mentioned. If it be for Money, the same is ordinarily expressed by Marks, and not Pounds; and have oftentimes these Words subsequent: *Pro decem maris argenti, quas mihi dedit in gersumam.* Which Word is Saxon, from *gansuma*, and signifieth a Price or Reward; but we find it very rarely in any Deed after Henry III. but in *Domesday-booke* it is common: And sometime the Consideration is not expressed save in the End of the Deed (as in the Close of a Fine) *pro hac autem donatione, &c. dictus N. dedit mihi sex sol. &c.*

The other Consideration for *Service* riseth out of two Reasons: The one, for that in old time he that had Land by Inheritance might not alien it from his Heir (as before we have shewed) but to a religious House, or in consideration of some Marriage, or in recompence of Service; therefore to enable the Alienation they sometyme used this Colour. Another while they granted

it truly for the Service of the Grantee, that thereby they might be the better supported in War by his Person, or in Peace by his Power. And therefore when the Deed saith, *Scitis me pro homagio & servicio suo dedisse*, or *concessisse* to such an one any Land or Tenement, it is to be understood that the Donor or Grantee must hold it of him by Homage and Fealty: And therefore when the Statute of *Quia Emptores terrarum* ordeyned that no Man should hold Lands to hold of himself, Grantee should hold as his Grantor held ever, then grew this Phrase never more to be used in Deeds, but died so soon as the Statute of *Quia Emptores* (which was . . .) was borne.

CAP. IV.

Of the Words of Grant or Donation.

THE Words of Grant in the first Person . . . Present Tense, *Do & Concedo*; but then without the Word *confirmo*; for that the thing granted passeth not before, nor otherwise than by the Deed, which therefore cannot say *confirmo*, because, as *Bracton* saith, *Lib. 2. Tract. 1. cap. 16. fol. 34. b. Confirmare est id quod prius firmum fuit, simul firmare*. To confirm, is to joine in making that firme, which before had some Firmness. Therefore the usuall Words in Deeds, which also are very auncient, are in the Preterperfect Tense, *Dedisse, Concessisse, & hac presenti Charta Confirmasse*. Whereof the two first Words, *Dedisse & Concessisse*, do imply some precedent Conveyance, as namely a Feoffment or Livery of Seisin to have been made of the Land, and that now the matter being put in Writing, the Donor by that Writing doth further ratifie and confirm the former Alienation and Livery: For the Deeds in Times past were but Notes, or subsequent Remembrances of the Livery precedent, and of the Witnesses to the same; of which sort I have seen divers, and can produce some, as in *Ramsay-book*, sect. 263. in the time of *Hen. I. Edwoldus de Wodeham seifvit Abbatem de Ramseia de terra sua quam habuit in Londonia . . . matris & Con-*

ventionem . . . habuerunt Testibus, &c.

And sect. 262. *Hi sunt Testes qui fuerunt inter Abbatem Reinaldum & Hugonem Alwoldi filium, ubi ille Hugo dedit Deo & S. Benedicto & Abbatem unam hidam apud Hemingford solam & quietam ab omni calumpnia propter pecuniam, & Abbas dedit ei xx sol. & duas summas hordei. Testes ex parte Abbatis hi fuerunt, Hervetus Monachus, Hugo Interpres, Bernardus Morinus, & alii; ex parte Hugonis, Alfredus, Ingoldus, Ragemerus, Richardus de Cumertun.*

And divers other Sect. 204, 205, 275, 285, &c.

CAP. V.

Of the Thing granted.

THE old declare
The nature
we meet with in old
Saxon, others brought in by the
Hide, a Ploughland, an Oxgang
a Yard-land, an Acre, which in Latin are named *Hida* or *Familla*, and
Mansum, *Carucatus*, *Bovatus*, *Ferlingus*, *Fardendilla* or *Quarantata*,
Virgata and *Acra*. So likewise *Cotag*, *Croft*, *Test*, &c. French or Norman are *Manor*, *Messe*, *Messuage*, *Tenement*, *Gardin*; in
Latin, *Mauerium*, *Messuagium*, *Tenementum*, *Mariscus*, *Gardinum*.
Mauerium and *Tenementum* I find sometimes in Latin Deeds of the Saxon
times; but then I suppose thereby, that it is not the Original, but a Trans-
lation.

The Name and Place of the thing granted were ordinarily express'd, as
well before as after the Conquest; but the particular manner of abutting,
with the Term itself, arose from the Normans, as appeareth in the Custu-
mary of Normandy, cap. 556. where it is said, that Declaration must be made
par bouts & costes desdites terres saises, of the Abbutals and Sides of the
said Lands seized. *Bout* signifieth the End of a thing, *abbouter* to thrust
forth the End. So the Field purchased by *Abram*, Gen. xxiii. 17. is said to
be called *Ephron's*, to lie in *Macpelah*, and overagainst (that is, to abutt
upon) *Mamre*.

CAP. VI.

Of the Estate of the Granter.

or Title of the Grantor
be certainly set down
this Day a Declaration
Grantor hath to the same
habui mihi & heredibus meis ex dono
& concessione J.S. or, *que nuper mihi jure hereditario descendebant*.
Which no doubt is an excellent means to illustrate Conveyances; yet was it
not in use in *Bracton's* time (as it seemeth by the Deed propounded by him)
nor many Ages after, by any thing that I have seen, and now remember.

CAP. VII.

Of the Habendum or Estate granted.

THE
yet I

Witlafius King of Mercia
by little and little it grew or
other forme of words

The Use of it then was, as well to expresse the thing granted by the Particulars and Appurtenances, as to lymite the Estate and Tenure, which also was not forgotten in Abraham's Purchase, wherein it is recited, that not only the Field, but the Cave, and all the Trees in it, round about the Borders, were made sure. Therefore some Monk or Priest, near the time of the Conquest, devised certain classick Forms of explaining the thing granted, and the Appurtenances, by exquisite Words and Phrases, which were much in request till about tymes. As for example, in the Charter whereby Maud the Empress granted the Earldome and Castle of Hereford, with diverse Manors, to Miles of Gloucester; the *Habendum*, or rather the *Tenendum*, is thus amplified. *Quare volo & firmiter precipio, quod hec omnia supradicta teneat de me & heredibus meis ipse & honorifice & in bosco & plano pratis & pasturis in molendinis, stagnis & vivariis, in viis, semitis, in foris & feriis, infra burgum & extra, in civitate & extra, & in omnibus locis, &c.* And many such other, which, as it seemeth, took their Pattern from the French and Germans, who long before used it, as appeareth by Marculphus in his *Formula*, and Melchior Goldastus in his *Centuries of Antient Deeds*.

Another Office of the *Habendum* is (as I said) to declare the Estate graunted, which sometime was absolute, sometimes limited. The absolute Estate was to the Grauntee and his Heirs, to give and sell, and do what he would with, which upon the matter, to use the Phrase of subsequent Times, was to him, his Heirs and Assignes. But they had not then this Word Assignes, and therefore where the Donor intended that the Donee might either leave it to his Heirs, or alien it at his pleasure, they added these Words in the Deed: *Habendum & tenendum dicto N. & heredibus suis, vel cuicunque dare, legare, vendere vel assignare voluerit.* Which Clause I was Father to dispose otherwise fore appear

If the same Land came unto it seemeth the rather to be so, for that they the Word *legare*, as to give him Power to dispose by his Will; which unless it were so expressed the Will of the Donor, or that his Heir after consented unto, he could not do.

The *limited* Estate comprehended in those days not such as at this day we call *Estates entaile*, for Life or conditionall, but some kinds also of Estates of Inheritance; as where they gave Lands to a Man and his Heirs, with an intent he should not put it from his Heirs, but suffer it to descend from one to another, then would they add these Words: *Habendum sibi & heredibus suis*

suis hereditarie, not adjoining, *vel cuicumque dare, legare, vendere vel assignare voluerit*. Which by the Law of *Alured* before recited was a Prohibition for disposing it otherwise than as the Donor appointed it. So I conceive the Deed of King Stephen

Sciatis quia dedi

Willielmo hereditarie

Manerium meum de

pertinentibus sicut

melius tenui dum in mea manu fuit (except, &c.) *de me & heredibus meis, ad tenendum cum omnibus liberis consuetudinibus eidem Manerio pertinentibus.*

And that of Ric. I. in the first Year of his Reign: *Sciatis me dedisse & concessisse, & presenti charta confirmasse, Roberto filio Hugonis de Northanthon, & heredibus suis, domum illam cum terra in Northanthon, quam Willielmus de Ballivo fecit, &c. sibi & heredibus suis, tenendum de nobis & heredibus nostris in feodo & hereditate, &c. Quare volumus quod ipse & heredes sui habeant & teneant predictam domum, &c.* Where the Words *in feodo & hereditate* seem to restrain him from alienating it; for that *feodo* here perhaps is not to be understood, according to *Littleton*, for an Estate of Fee Simple, but for a Knight's Fee (which the Feudists call *Beneficium*) and might not at those times be alienated without License of the Lord; but must pass (as the next Word following directeth it) *in hereditate*. For it were a great Tautologie, or vain Repetition, if *habendum sibi & heredibus, habendum in feodo, and habendum in hereditate*, should all three signify no more but this one thing, to have it in Fee Simple. And to confirm my Concept herein, I find since in *Ramsay-booke*, sect. 268, & 274.

A

Heires

likewise

in old times, at least not

lib. 2. tract. cap. 15. f. 32. a. following

Possessions according to the Civil

difference between *usufructum rei* and *Dominium* or *Proprietatem*.

But about Ric. . . time some that were subject to real Actions, to the intent to put the Demandant by his Writ, and others, that they might dispose the Profits of their Lands by their Wills, did make Feoffments of their Lands to many of their Friends jointly, and to their Heirs first simply, upon confidence, that they should therewith perform the Feoffor's Intent, without expressing any Use in the Deed. And after the Statute of Henry IV. made for releiving of such Feoffors, then often they declared the Use expressly, from whence a great Arm of new Law troubled the Kingdom a long time, till the Statute of 27 Henry VIII. of transferring Uses into possession, at length suppressed it. But I am now come too far within the ken of Lawyers. Here therefore I stay for this Point

ryseth, that in the

27 Hen. VIII. you see so

over there were in former

And since also upon occasion there is use of them in Conveyances.

C A P. VIII.

Of the Use whereto the Estate was granted.

IT was
 this day
 the Ploughe Land
 Portion. For Pefants
 they called Leopler or Churles
 of much Land in those times; but had their
 upon the Lordships and Lands of more eminent Men; and did therefore ei-
 ther manure their Demeafnes, and do their Husbandry, or yielded them Vit-
 taitles for Provision of their Houses: Wherein becaufe the Landlords should
 not opprefs them, Ina King of the *West-Saxons* made the Rent or Feorme
 certain by his Law, *cap. 6. viz.* that the Rent of x Hides (or Plough-lands,
 and fo after that rate) should be ten . . . of Honey, 100 Loafes of
 Bread, 12 Stands (*Amphoras*, Sax. *ambpa*) of *Welch Ale*, and 30 of final-
 ler, 30 Beefes, 2 . . . or 10 Weathers, 10 Gees, 10 Hennes, 10 Chesfes,
 one Stande (*Amphora*) of Butter, 5 Salmon, 20 Pound weight
 and 100 Eels; good Pennyworths at this day. So in *Ramsay-book*, sect. 154.
 the Rent of *Hichelinge* is 10 Measures of Malt, 5 of Groute, 5 of Wheat-
 meale, 8 Gammions of Bacon, 16 Chesfes, 2 fat Cows, &c. But becaufe
 this Rent thus reserved was for Vittails and Diet, therefore they called it
 reopme, which in their Language doth fo signify; and from hence it cometh,
 that we at this day call our Rents of that nature, and the Land also that
 yeildeth them, *Fearmes*.

since I found these old *Saxon*
 in the West part of *Ireland*
 had cast them off soon after the Conquest, and much changed them
 before; yet the Exchequer-book (ascribed to *Gervasius*) saith, that the first
 Kings after the Conquest received not Gold and Silver for their Lands, but
 Vittails to the daily Provision of their House, and that the Author in his
 time had seen some Men, who in their time had seen the Vittails and Provi-
 sion so brought to the Court; and the Officers appointed to receive them knew
 what they were to have of every Man, and out of every Countye. As for
 the Money that the Kings then used, either for Wars, Wages, Rewards, or
 other Occasions, it rissed by the Profitt of Courts and Contracts, and from
 Citties and Castles, Woods and Places not imployed to Agriculture. Cu-
 stome and Imposts it seemeth were not then known, and the matter of Pur-
 vey began not till *Edward I's* time. But *Henry I.* living much in *France*,
 and having not therefore that Occasion of expending these things on his
 House, his Officers which received them accounted to the Sheriffs in every
 Countrey for the Value of them at certain Rates; and thereby turned his
 Fearme into Mony
 the Rate
 Wheat to
 The Carcase
 A Ramme
 Provender for 20 Horses
 But the Farmers, Tenants and
 in mean time so grievously opprefs'd, that

by

by multitudes unto the King they surrendred their Ploughshares, and neglected their Tillage. Whereupon the King having also at that time more use for Mony than such plenty of Meat, by the Advise of his Nobility sent Men of Wisdom into every County, who viewing the Lands and Victualls issuing out of them, converted the Fearme of Vittails into a Rent of Mony; Which in those Days was paid into the Chequer, not only by Tale, but by Weight also and Touch: For the Priviledge of minting of Mony was not then only in the King, but common to many Bishops and great Men of the Kingdome; which also was the occasion of much counterfeiting of Coin, it being then no Treason, nor punishable with Death, but with the Loss of a Hand or Privy Members.

the King was generally Kingdom, yet not so as that layde the other wholly down dispose their great Lordships. partes they appointed to the great Mansion of the which they called the Site of the Manor, assigning a Portion of Lands for maintenance thereof, named the *Domains* (we the *Demeanes*) that is, the Lord's part, in *Latin Terra Dominicales*. The second, to militarie Men, for assistance in War; which thereupon was called the *Knights-fee*, that is, a Souldiour's Portion or Wages, from whence *Servitium militare*, the Tenure by Knight's Service, is derived. The third to Husbandmen for manuring their Demean Lands, and other Works of Husbandry called *Tenure in Socage*, which was not known to the *Normans* before their coming into *England*, as that of Knight's Service was unknown to the *English* till the time of the *Normans*. The fourth was to both of them, and partly for Vittails to furnish their Table, which they imposed chiefly upon their Socage Tenants, partly for Mony to strengthen their Purse, wherein they charged them deepest, that held by Knight's Service. The Manor of *Gimingham* in *Norfolk*, yet reteineth that old Fashion. Thereupon Rents *Pabulum* beare in conversion for the use and Graunts to their Tenants most part Mony, and not Corne or Meate how disproportionable soever those auncient Rents be to the now Value of the Lande (by reason that Money, hath been so often allayed;) yet if you look upon the Value of the Mony of that as, when an Ox was sold for a Shilling, and a Sheep for a Groat; it will appear that the Rents then imposed were answerable to the Worth of the Land at that time, accompting therewith the Service reserved, and the Fyne (which they called *Gersuma*) given for the same.

Also the Use of those Times was to reserve in their Deeds somewhat *ad hydagia* & *ad gelda Regis*, that is, the Payments which we now call Taxes and Fyftenes, and to Aydes and Escuages, when they should happen.

CAP. IX.

Of the Reservation.

their Rents they commonly
 and Markes yet about
 tyme reserved it by the
Liber Ramsf. §. 372. 386.
 Statute of *Quia Emptores*
 all Power of such
 Reservations, and of reserving Rent Services in Fee, was utterly extinct. So
 that in what Deed soever they are found (being not made by the King) it de-
 clares it presently to be before

CAP. X.

Of the Tenure.

So reserved
 of necessity
 for that
 hold of him
 a new Tenure; and therefore
de capitalibus Dominis Feodi illius per Servitia . . . prius debita, &c. had
 then first the Commencement in the usual Form of Deeds; yet sometime be-
 fore the Statute, the Grantors to ridd themselves of a troublesome or charge-
 able Tenure, or otherwise upon agreement, would assign the Grauntee not to
 hold of himself, but of his next Lord Paramount. So *Walter de Bolebeck*
 in *Henry II's* time assigned the Abbot of *Ramsfey* to hold the Manor of *Wal-*
ton of the King in capite, sect. 399.
 This Statute also stopt the course of creating new Manors, which in former
 time was so ordinary in our County of *Norfolk*, as no Man almost that had
 an hundred Acres of Free Land, but would graunt a Portion of it amongst his
 Followers for Service, Rent, and Suit of Court, which at first was no more
 but to attend upon him at his Manor-house, then called a Court; and by this
 means usurped by little and little the manner and fashion of a Manor
 Man might have, but by
 unto him *Soc* and *Sac* and *Team*
 all his Tenants to appear
 him Service there; *Sac* Liberty
 arising in this manner.
 Villanes and their Progeny
 to seise them, their Lands and Goods wheresoever they found
 them, and to measure Justice unto them after the use of the Town or Man-
 nor whereto they were regardant. For they were called *Villani*, because
 they belonged *ad Villam Domini*; that is, to the Manor or Town of their
 Lord.

Lord. Others were *Bondi* or *Bondmen* simply, as neither in Blood nor belonging to any Manor, as such as sold themselves into Bondage, like the *Egyptians* to *Pharo*, or were condemned to it by course of Lawe. The third sorte was the Offspring of both these, who because they were *nati ad Servitutem*, were called *Nativi*. So that a Man may be *Bond*, yet neither *Nativus* nor *Villanus*; and he might be *Bondus* and *Nativus*, yet not *Villanus*; or *Bondus* and *Villanus*, yet not *Nativus*; and might also be all the three, as commonly they were, *Bondi*, *Nativi*, and *Villani*.

To returne
Dominis
tenant
capitalis
 it. But
 properly understood of
 over of the King in *Capite*
 and great Barons of the Kingdome, who thereupon were then called *Capitanei Regni*, and were said to be *Capud* or *Capita Terra*, holden of them by inferior Lords. Therefore *William Earle Marshall* to in his Deed recited by Sir *John Davie's Reports*, p. 63. 6. saith, *Nisi forinseca Tenementa tenuerit de me in Capite*. And the Booke of *Ramsay*, sect. 279. speaking of the Divisions of *Cranfield* and *Craule* in *Huntingtonshire*, saith, that it was done *jussione Henrici Regis Anglia & Davidis Regis Scotia, qui capud est istius terra post Regem Anglia*. Therefore *tenere in Capite* was in those days understood as well to hold *de Capiteano Regis*, that is, of him that held it immediately under the King, as of the King himself, as appeareth by the Words alleadged out of the Earle Marshalls Deed, and by *Ramsay-book*, sect. 269. where it is said: *In capite eam terram de Abbate tenebit*. And sect. 359. *Suscepit eam terram in capite de Abbate tenendam*
 many strange Tenures, which we
 but that would lead me into
 variety of them were
 the *Normans* especially
 and all the kinds of
 Wardship and Marriage.
 yet the *Scottish Lawes*, in their *Regia Majestas*, cap. i. affirme, that before our Conquest *Malcolm II.* about the Year 1004. divided all that Realme amongst his Barons, to hold in Knight's Service by Wardship and Marriage. For my own part, I am not of that opinion; but let others judge, whether it be like that we took our Laws from them, or they from us. The *Saxons* (that I can find) had not so much as the Name or Tenure amongst them; yet had they Possessions of diverse natures, as *Bokland*, *Folkland*, whereof we have spoken, and the Land of *Sockmen*, which perhaps is our *Socage*, and Lands given in *perpetuam eleemosynam*, which now we call *Franc almoinge*; but they observed not in them our Rules and Ceremonies. Gifts in *Franc almoinge* were not ordinary amongst our *Norman* Auncestors till about *Henry II.* And I observe in them that, contrary to *Littleton*, they then reserved many times, Rents and Services out of them; using this Distinction: When they made a Reservation out of them, they said in their Deed, *Habendum in liberam & perpetuam eleemosynam, reddendo, &c.* But when they made no Reservation, they said, *Habendum in liberam, puram, & perpetuam eleemosynam, quietas & solutas ab omni servitio & exactione seculari*; laying the difference in *libera & pura*.

CAP. XI.

Of the Warranty.

Warranty Nations especially

France

their Rule

rei præstare

if it be evicted

Land in our Saxon Lawe

was often driven to vouch them of whom he bought them (as to discover Theft) which they called not *warrantare*, but *interciare*; as if you should saie, to vouch a third Man to take the matter upon him. But even in that case, William the Conqueror, in his Laws, saith, that nothing shall be sold *sine Fidejussore & Warranto*.

To be short, the Normans brought it into England, as annex unto their Tenure of Homage. For as the Tenant, that doth Homage, binds himself in Reverence and Fidelity to his Lord; so the Lord, by taking it, tieth himself to give Protection and Warranty to his Tenant, though it be not mentioned. Therefore saith Glanvil, lib. 9. cap. 4. *Quantum homo debet Domino ex homagio, tantum illi debet Dominus ex Dominio præter solam reverentiam*. The Lord oweth as much to his Tenant by reason of his Signiory, as the Tenant doth to the Lord by reason of his Homage, except

saith he if the Land be

Lord must warrant it, and

the Clause of Warranty

Deeds near the time of

King Stephen, and

Ric. I. for in those times

made either to Layemen for

Homage and Service; and then (as I say) the Clause needed not, or else to Churches in *liberam Eleemosynam*: And then because the thing was voluntarily given them, used not to intangle the Donor with Warranty, but took his Estate as it was, without looking a given Horse in the Mouth. Therefore, though I have seen a Multitude of Deeds in *Franc almoigne*, yet remember I not, that ever I saw any with the Clause of Warranty, till the time of

Nor was it ordinary in Graunts made *pro Homagio & Servitio*, till about Henry III's time, and brought in then for explanation rather than for Necessity; as at this day Clauses of Distresse for Rent-areire in Leases for Years.

C A P. XII.

Of the Sealing and Delivery.

SE But ma
of Seales
yet Ingulphus
of Seales into
Deeds with a

Non tantum hunc morem, sed alias etiam consuetudines immutabant: nam cyrographorum confectiorem Anglicanam, quæ usque ad Edwardi Regis tempora fidelium presentium subscriptionibus cum crucibus aureis, aliisque sacris signaculis firma fuerunt, Normanni condemnantes, chirographia Cartas vocabant, & Chartarum firmitatem cum cædæ impressione per uniuscujusque speciale signum sub intitutione trium vel quatuor testium astantium conficere constituerunt, &c. That is, they not only changed this manner of Knight's Service, but other Customs also: For the English manner of making Deeds, which till the Reigne of King Edward the Confessor were firme and effectual, by the Subscription of some faithfull Persons being present, and signing them with golden Crosses, or such other sacred Marks, they utterly condemned, and calling their Writings (*Chartas* or Charters) reposed the Validity thereof in a waxen Print made by every Man's particular Seale, thrusting into them three or four Witnesses of the Standers-by

living much in . . . William the Conqueror
out of Normandy into . . . and Ingulphus himself
but I have shewed already . . . flourished about 80 Years before
his Seale. And if we . . . Scotland called *Regia*

Majestas, cap. 2. . . . not only a regular Forme of
Years before Edward the Confessor; but a certain Rate also for the Fees
of the Great Seale; as, To a Patent of c. l. Land a Year, x l. for the Seale;
to a Lettet of Seisin upon the same, a Marke; to a Protection, xii d.

But what use soever our English Saxons made of Seals, it appeareth that
they had them commonly in the time of Edward the Confessor: for in the
12. cap. of his Lawes he commands, that the Fine collected in the Hundred
for the Escape of Murtherers *sub Sigillo alicujus Baronis Comitatus sigilla-*
rentur, quas sigillatas ipse servaret per annum & diem, &c. But whe-
ther this was part of the Body of the Lawe, or inserted by the Conqueror, I
leave it now to further consideration. In the very Canon of the Law we
now find it

It
the good
but what
jus Sigilli
that
reproved
it belonged
Realme. I to
opinion; but I
of the Manor of
now conceive it

in very thick Parchment

Witnesses occupied as many Lines my remembrance the rest of the Matter having never had any Seale, as plainly appeared; for it was cutt with a long slender Labell to tye it up, like our Obligations at this day, and Copies of Court-Rolls.

The Seales of those Times, which we ordinarily meet with, are altogether of great Persons, and till *Henry III's* time, for the most part on Horseback; but the Deeds themselves generally without date. Among other Observations therefore to direct our Conjectures touching the Time they were made in, the Seal is one principally to be considered . . . and till *Hen. II.* very rude, and the . . . Horse. Great Heades with all disproportionable . . . Trappers or any Ornaments

The Men upon . . . so close to their Skinn having a Sculle with . . . carrying upon their Left . . . without any Ensigne or Marke

In their Right Hand commonly a Sword . . . with a Pennon of two Labells near the Point. Those that have such a Spear, I take them to be the great Commanders, which in Times past receiving their Office from the King, had Seisin thereof delivered them by some such Banner; and were therefore called of the *Germans Faurleben*, or *Vexilliferi Proceres*. So great in old time was their Estimation, as the *Suprabienstan* Kings in *Spain* are thought to have been no other but *Vexilli-feri Duces*, Leaders honored with the Ensigne of a Banner. And the Dukes of *Normandy* were created by delivery of a Sword and Banner unto them.

But . . . write . . . the Day . . . *H. II.* or . . . and them . . . at the top . . . *R. I's* time . . . little part of . . . cut off. But . . . bending downe . . . an Harte, and the Foot . . . broader and more obtuse . . . the topp may proceed from the bending in . . . of the Sheild; and not otherwise to be described by a Graver. But that you may the better conceive them, and others of those Times, see their Formes, and according to their several Ages.

C A P. XIII.

Of the Date.

I N our . . . usually . . . dated . . . the Month . . . used the . . . of *Eluther* . . . sene conclude . . . 8. *Calend. Septembr.* . . . which our *Saxons* foll . . . as appeareth by . . . and *Melchior Goldastus* . . . to

to name the Place for the most part
him that writ their Nephews our Auncestors did . .
. in our Saxon Deeds the Place almost
. the Chancellor or Wrighter's Name often inserted, as in
King Offaes Deed in *Ingulph*, pag. 854. *Ego Tilberus Presbyter Domini
mei Regis Offa ad ejus præceptum hoc Chyrographum manu mea scripsi.* In
the Charter of *Witblasius*, pag. 858. *Ego Beza Scriba Regis Witblasii ma-
nu mea Chyrographum istud scripsi.* In the Deed of *Thorold* Sheriffe of
Leicester, pag. 914. *Ego Livingus Clericus istud Chyrographum manu mea
scripsi.* In the Deed of *Bertulph* King of *Mercia*, pag. 861. *Ego Swithul-
phus Londinens. Episcopus, ad jussionem Domini mei Regis istud Chyrogra-
phum dictavi & subscripsi.* And pag. 874. *Turketul* the Abbat, who had
been Chancellor; indighted the Deed or Charter of *Edward* the Confessor
. not the use to give Dates of *H. III.* the first
. remembrance I did ever of his Reigne
many a date, yet the Clergy often
in all Ages inserted as for place. But both
. to name the they dated them also. Which
Use continued because many Actions were
that Place; and made locall by banished it out of their
Deeds, but Bonds and Indentures of Covenant
the Day of the Date always followed that of the Place, and both of them for
the most part the *Tesse* or Inscription of Witnesses. But in setting down the
Day, they neither observed the manner of the *Saxons*, which was by Ca-
lends, nor that which we use, the Day of the Month. Their Custome was
to name the Day or the Vigill of some Saint, though it were very obscure;
or if a Festival happened about that time, then to name it by such a Day of
the Week next before or after that Festival, using commonly the Sunday, or
some other Day of meeting serving best for Witnesses. As for example:
*Datum apud Bekerton die Dominica proxima post festum Exaltationis
sancte Crucis, anno regni Regis Edwardi filii Regis Edwardi xº.* After
the dat. apposui
post Festum *Virginis* *conquestum*
By discover common
in private in applying the
then to the *Edward* not attributed to
any King nor *Edward III.* who being stiled
the him from his Father and Grandfather
. had also the Words after the Conquest
to distinguish him likewise from *Edw. III.* before the Conquest; for so some
called *Edward* the Confessor, being the third of that Name; and thereupon
named *Edward III.* after the Conquest for *Edward VI.* as many foreigne
Writers yet do But there was no Cause to give that Ad-
dition to the *Richards* or *Henrys*; for there was never any of their Names
Kings of *England* before the Conquest (unless he that stileth our now King
to be *James* the Second, because some talke of one
. Years since
manner of dating Vigils and Feasts out by or in
Edward IV. have retained in
. even unto this Day.

C A P. XIV.
Of the Witnesses.

THE one for the which was with times past Quene her ordinary which *Pius* much desire it is an ancient used by the King and now and then as in two Epistles of *Ric. II. ip[s]is apud Joppen. prim.*

The Deeds of other Men great number of Persons added in the Body of the Deed, both before and some of them being named by the one Partie, some by the other, as appeareth by that we have already delivered, and of the chiefest Rank and Quality in the Parts they dwell. For by the Laws of the old *German* and *French* (both which we imitated) Witnesses unto Deeds ought to be of the nobler sort and free Birth; which well appeareth in the *Teste* of our Deeds in all Ages. For which

Kings and great testified at some Synod both of the Estates Ecclesiastical meaner Men in the Country the Hundred Courte and chiefest of the County or Hundred *Bracton, lib. 2. tract. 1. cap. 16. n. 12.* none but Barons. Witnesses to Deeds of they grew by little and little for that such were not so much as the State of *Marlbridg* to Bishops, Earles, Barons and to come at the Sherriffes turn without required it. And in process of time at the County and Hundred Court grew less and less respected.

As for that which *Ingulphus* the *Saxon* saith, that *Normans* set the Validity of their Deeds upon the Seale, using but three or four Witnesses, he seemeth to speak that but as in derision of the new Custome; for since their time I have often seen 20, 30, 40 Witnesses, and above to one Deed, all principal Men, and of State. But in *Hen VIII's* time Witnesses began to be left out in the Body of the Deeds, and to subscribe their Names in some By-places, or the Back of the Deed, with respect in effect either to the Number or Quality of them.

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Concerning the *Saxon Lecturs*, which Sir Henry Spelman settled, and design'd to perpetuate; it is affirm'd by an intelligent Person, upon the authority of original Letters which he has in his hands, that the Stipend which he allow'd Mr. Wherlock, was only 10 l. per annum; but that, besides, he presented him to the Vicarage of *Middleton* in the County of *Norfolk*; and also gave him the Profits of the *Impropriate Rectory* of the same Church; and that both these were intended to be settled in perpetuity, as an *Endowment* of his *Saxon Lecture*.

